Supreme Court of India
Smt. Gian Kaur vs The State Of Punjab on 21 March, 1996
Equivalent citations: 1996 AIR 946, 1996 SCC (2) 648
Author: J S Verma
Bench: Verma, Jagdish Saran (J), Ray, G.N. (J), Singh N.P. (J), Faizan Uddin (J), Nanavati G.T. (J)

PETITIONER:
SMT. GIAN KAUR

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT: 21/03/1996

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
RAY, G.N. (J)
SINGH N.P. (J)
FAIZAN UDDIN (J)
NANAVATI G.T. (J)

CITATION:
1996 AIR 946 1996 SCC (2) 648
JT 1996 (3) 339 1996 SCALE (2)881

ACT:

HEADNOTE:

JUDGMENT:

With CRIMINAL APPEAL NO. 167 OF 1984 Surat Lal V.

Raj Kumar & Ors.

With CRIMINAL APPEAL NO. 279 OF 1984 Smt. Harbans Singh & Anr.

V.

The State Of Punjab With CRIMINAL APPEAL NO 363 OF 1996 (arising out of SLP(Crl.) No.2944 of 1994) Chandrabhushan V.

The State of Maharashtra With CRIMINAL APPEAL NO. 364 OF 1996 (arising out of SLP(Crl.) No.2943 Of 1995) Dilbagh Singh & Ors.

V.

The State of Himachal Pradesh And CRIMINAL APPEAL No. 365 OF 1996 (arising out of SLP(Crl.) No.4193 of 1995) Lokendra Singh V.

The State of Madhya Pradesh J U D G M E N T J.S. VERMA,J.

Leave granted in special leave petitions. The appellants Gian Kaur and her husband Harbans Singh were convicted by the Trial Court under Section 306, Indian Penal Code, 1860 (for short "IPC") and each sentenced to six years R.I. and fine of Rs. 2,000/-, or, in default, further R.I. for nine months, for abetting the commission of suicide by Kulwant Kaur. On appeal to the High Court, the conviction of both has been maintained but the sentence of Gian Kaur alone has been reduced to R.I. for three years. These appeals by special leave are against their conviction and sentence under Section 306, IPC.

The conviction of the appellants has been assailed, inter alia, on the ground that Section 306, IPC is unconstitutional. The first argument advanced to challenge the constitutional validity of Section 306, IPC rests on the decision in P. Rathinam vs. Union of India and Anr., 1994) SCC 394, by a Bench of two learned Judges of this Court wherein Section 309, IPC has been held to be unconstitutional as violative of Article 21 of' the Constitution. It is urged that right to die' being included in Article 21 of the Constitution as held in P. Rathinam declaring Section 309, IPC to be unconstitutional, any person alletting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under Article 21; and, therefore, Section 306. IPC penalising assisted suicide is equally violative of Article

21. This argument, it is urged, is alone sufficient to declare that Section 306, IPC also is unconstitutional being violative of Article 21 of the Constitution.

One of the points directly raised is the inclusion of the `right to die' within the ambit of Article 21 of the Constitution, to contend that any person assisting the enforcement of the `right to die' is merely assisting in the enforcement of the fundamental right under Article 21 which cannot be penal; and Section 306, IPC making that act punishable, therefore, violates Article 21. In view of this argument based on the decision in P. Rathinam, a reconsideration of that decision is inescapable.

In view of the significance of this contention involving a substantial question of law as to the interpretation of Article 21 relating to the constitutional validity of Section 306, I.P.C. which requires reconsideration of their decision in P.Rathinam, the Division Bench before which these appeals came up for hearing has referred the matter to a Constitution Bench for deciding the same. This is how the matter comes before the Constitution Bench.

In addition to the learned counsel for the parties the learned Attorney General of India who appeared in response to the notice, we also requested Shri Fali S. Nariman and Shri Soli J. Sorabjee, Senior Advocates to appear as amicus curiae in this matter. All the learned counsel appearing before us have rendered great assistance to enable us to decide this ticklish and sensitive issue.

We may now refer to the submissions of the several learned counsel who ably projected the different points of view.

Shri Ujagar Singh and Shri B.S. Malik appeared in these matters for the appellants to support the challenge to the constitutional validity of Sections 306 and 309, IPC. Both the learned counsel counsel contended that Section 306 as well as Section 309 are unconstitutional. Both of them relied on the decision in P. Rathinam. However, Shri Ujagar Singh supported the conclusion in P. Rathinam of the constitutional invalidity of Section 309, IPC only on the ground of violation of Article 14 and not Article 21. Shri B.S. Malik contended euthanasia is not relevant for deciding the question of constitutional validity of Section 309. He submitted that Article 21 cannot be construed to include within it the so called 'right to die' since Article 21 guarantees protection of life and liberty and not its extinction. He submitted that Section 309 does not violate even Article 14 since the provision of sentence therein gives ample discretion to apply that provision with compassion to an unfortunate victim of circumstances attempting to commit suicide. Shri Nariman referred to the reported decisions to indicate that the enforcement of this provision by the courts has been with compassion to ensure that it is not harsh in operation. Shri Nariman submitted that the decision in P. Rathinam requires reconsideration as it is incorrect. Shri Soli J. Sorabjee submitted that Section 306 can survive independently of Section 309, IPC as it does not violate either Article 14 or Article 21. Shri Sorabjee did not support the construction made of Article 21 in P. Rathinam to include therein the 'right to die' but he supported the conclusion that Section 309 is unconstitutional on the ground that it violates Article 14 of the Constitution. Shri Sorabjee submitted that it has been universally acknowledged that a provision to punish attempted suicide is monstrous and barbaric and, therefore, it must be held to be violative of Article 14 of the Constitution. Shri Sorabjee's argument, therefore, is that Section 306, IPC must be upheld as constitutional but Section 309 should be held as unconstitutional, not as violative of Article 21 as held in P. Rathinam but being violative of Article 14 of the Constitution. He also sought assistance from Article 21 to support the argument base Article 14.

At this stage, it would be appropriate to refer to the decisions wherein the question of constitutional validity of Section 309, IPC was considered.

Maruti Shri Pati Dubal, Vs. State of Maharashtra, 1987 Crl.L.J.743, is the decision by a Division Bench of the Bombay High Court. In that decision, P.B.Sawant, J., as he then was, speaking for the Division Bench held that Section 309 IPC is violative of Article 14 as well as Article 21 of the Constitution. The provision was held to be discriminatory in nature and also arbitrary so as to violate the equality guaranteed by Article 14. Article 21 was construed to include the right to die', or to terminate one's own life. For this reason it was held to violate Article 21 also.

State Vs. Sanjay Kumar Bhatia, 1985 Crl.L.J.931, is the decision of the Delhi High Court. Sachar, J., as he then was, speaking for the Division Bench said that the continuance of Section 309 IPC is an anachronism unworthy of human society like ours. However, the question of its constitutional validity with reference to any provision of the Constitution was not considered. Further consideration of this decision is, therefore, not necessary.

Chenna Jagadeeswar and another Vs. State of Andhra Pradesh, 1988 Crl.L.J.549, is the decision by a Division Bench of the Andhra Pradesh High Court. The challenge to the constitutional validity of Section 309 IPC was rejected therein. The argument that Article 21 includes the right to die' was rejected. It was also pointed out by Amarethwari, J. speaking for the Division Bench that the Courts have sufficient power to see that unwarranted harsh treatment or- prejudice is not meted out to those who need care and attention, This negatived the suggested violation of Article

14. The only decision of this Court is P.Rathinam by a Bench of two learned Judges. Hansaria, J. speaking for the Division Bench rejected the challenge to the constitutional validity of Section 309 based on Article 14 but upheld the challenge on the basis of Article 21 of the Constitution. The earlier decisions of the Bombay High Court and the Andhra Pradesh High Court were considered and agreement was expressed with the view taken by the Andhra Pradesh High Court as regards Section 309 qua Article 14. The decision then proceeds to consider the challenge with reference to Article 21 of the Constitution. It was held that Article 21 has enough positive content in it so that it also includes the 'right to die' which inevitably leads to the right to commit suicide. Expressing agreement with the view of the Bombay High Court in respect of the content of Article 21, it was held as under :

<SLS> 'Keeping in view all-the above, we state that 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." (Page 410) <SLE> The conclusion of the discussion was summarised as under: <SLS> "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 our criminal law to the global wavelength." (Page 429) <SLE> At this stage it may be mentioned that reference has been made in P.Rathinam and the Bombay High Court decision to the debate relating to euthanasia, the sociological and psychological factors contributing to suicidal tendencies and the global debate on the desirability of not punishing 'attempt to commit suicide'. The absence of provisions to punish attempted suicide in several jurisdictions has also been noticed. The desirability of attempted suicide not being made a penal offence and the recommendation of the Law Commission to delete

Section 309 from the Indian Penal Code has also been adverted to. We may refer only to the recommendation contained in the 42nd Report (1971) of the Law Commission of India which contains the gist of this logic and was made taking into account all these aspects. The relevant extract is, as under :

<SLS> "16.31 Section 309 penalizes 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 (See : Laws of Manu, translated by George Buhler, Sacred Books of the East edited by F.Max Muller, (1967 Reprint) Vol.25, page 204,J Shlokas 31 ad 32) 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.

31. 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 of Manu, Govardhana and Kulluka (See Medhatithi's commentary on Manu), 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 it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide (See : Laws of Manu, translated by George Buhler, Sacred Books of the East edited by F.Max Muller, (1967 Reprint) Vol.25, page 204,footnote 31). To this Max Muller adds a note as follows :- (See : Ibid) "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 Looking at the offence of attempting to commit suicide, it has been observed by an English writer: (See : H.Romilly Fedden : Suicide (London, 1938), page 42).

"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 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." (emphasis supplied) <SLE> A Bill was introduced in 1972 to amend the Indian Penal Code by deleting Section 309. However, the Bill lapsed and no attempt has been made as yet to implement that recommendation of the Law Commission.

The desirability of retaining Section 309 in the Statute is a different matter and non-sequitur in the context of constitutional validity of that provision which has to be tested with reference to some

provision in the Constitution of India. Assuming for this purpose that it may be desirable to delete Section 309 from the Indian Penal Code for the reasons which led to the recommendation of the Law Commission and the formation of that opinion by persons opposed to the continuance of such a provision, that cannot be a reason by itself to declare Section 309 unconstitutional unless it is held to be violative of any specific provision in the Constitution. For this reason, challenge to the constitutional validity of Section 309 has been made and is also required to be considered only with reference to Articles 14 and 21 of the Constitution. We, therefore, proceed now to consider the question of constitutional validity with reference to Articles 14 and 21 of the Constitution. Any further reference to the global debate on the desirability of retaining a penal provision to punish attempted suicide is unnecessary for the purpose of this decision. Undue emphasis on that aspect and particularly the reference to euthanasia cases tends to befog the real issue of the constitutionality of the provision and the crux of the matter which is determinative of the issue.

In P. Rathinam it was held that the scope of Article 21 includes the 'right to die'. P. Rathinam held that Article 21 has also a positive content and is not merely negative in its reach. Reliance was placed on certain decisions to indicate the wide ambit of Article 21 wherein the term life' does not mean 'mere animal existence' but right to live with human dignity' embracing quality of life. Drawing analogy from the interpretation of freedom of speech and expression' to include freedom not to speak, freedom of association and movement' to include the freedom not to join any association or to move anywhere, freedom of business' to include freedom not to do business, it was held in P. Rathinam that logically it must follow that right to live would include right not to live, i.e., right to die or to terminate one's life. Having concluded that Article 21 includes also the right to die, it was held that Section 309. IPC was violative of Article 21. This is the only basis in P. Rathinam to hold that Section 309, IPC is unconstitutional. 'Right to die' - Is it included in Article 21?

The first question is : Whether, the scope of Article 21 also includes the 'right to die' ? Article 21 is as under:

Article 21 <SLS> "21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law."

<SLE> A significant part of the judgment in P. Rathinam on this aspect, is as under:

<SLS> "If a person has a right to live, question is whether he has right not to live. The Bombay High Court stated in paragraph 10 of its judgment that as all the fundamental rights are to be read together, as held in R.C. Cooper v. Union of India what is true of one fundamental right is also true Of another fundamental right. It was then stated that is not, and cannot be, seriously disputed that fundamental rights have their positive as well as negative aspects. For example, freedom of speech and expression includes freedom not to speak. Similarly, the freedom of association and movement includes freedom not to join any association or move anywhere. So too, freedom Of business includes freedom not to do business. It was, therefore, stated that logically it must follow that the right to live will include right not to live, i.e.,* right to die or to terminate one's life.

Two of the abovenamed and critics of the Bombay judgment have stated that the aforesaid analogy is "misplaced", which could have arisen on account of superficial comparison between the freedoms, ignoring the inherent difference between one fundamental right and ,the other. It has been argued that the negative aspect of the right to live would mean the end or extinction of the positive aspect, and so, it is not the suspension as such of the right as is in the case of 'silence' or 'non- association' and 'no movement'. It has also been stated that the right to life stands on different footing from other rights as all other rights are derivable from the right to live.

The aforesaid criticism is only partially correct inasmuch as though the negative aspect may not be inferable on the analogy of the rights conferred by different clauses of Article 19, one may refuse to live, if his life be not according to the person concerned worth living or if the richness and fullness of life were not to demand living further. One may rightly think that having achieved all worldly pleasures or happiness, he has; some- thing to achieve beyond this life. This desire for communion with God may very rightly lead even a very healthy mind to think that he would forego his right to live and would rather choose not to live. In any case, a person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking.

xxx xxx xxx Keeping in view all the above, we state that 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.

In this context, reference may be made to what Alan A.Stone, while serving as Professor of Law and Psychiatry in Harvard University stated in his 1987 Jonas Robitscher Memorial Lecture in Law and Psychiatry, under the caption "The Right to Die: New Problems for Lawa and Medicine and Psychiatry. (This lecture has been printed at pp.627 to 643 of Emory Law Journal, Vol.37, 1988). One of the basic theories of the lecture of Professor Stone was that right to die inevitably leads to the right to commit suicide." (emphasis supplied) (Pages 409-410) <SLE> From the above extract, it is clear that in substance the reason for that view is, that if a person has a right to live, he also has a right not to live. The decisions relied on for taking that view relate to other fundamental rights which deal with different situations and different kind of rights. In those cases the fundamental right is of a positive kind, for example, freedom of speech, freedom of association, freedom of movement, freedom of business etc. which were held to include the negative aspect of there being no compulsion to exercise that right by doing the guaranteed positive act. Those decisions merely held that the right to do an act includes also the right not to do an act in that manner. It does not flow from those decisions that if the right is for protection from any intrusion thereof by others or in other words the right has the negative aspect of not being deprived by others of its continued exercise e.g. the right to life or personal liberty, then the converse positive act also flows therefrom to permit expressly its discontinuance or extinction by the holder of such right. In those decisions it is the negative aspect of the right that was invoked for which no positive or overt act was required to be done by implication. This difference in the nature of rights has to be borne in mind when making the comparison for the application of this principle.

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'.

Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity' is of no assistance to determine the scope of Article 21 for deciding whether the guarantee of right to life' therein includes the right to die'. The right to life' including the right to live with human dignity would mean the existence of such a right upto the end of natural life. This also includes the right to a dignified life upto the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die' an unnatural death curtailing the natural span of life.

A question may arise, in the context of a dying man, who is, terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.

We are, therefore, unable to concur with the interpretation of Article 21 made in P. Rathinam. The only reason for which Section 309 is held to be violative of Article 21 in P. Rathinam does not withstand legal scrutiny. We are unable to hold that Section 309 I.P.C. is violative of Article 21.

The only surviving question for consideration now is whether Section 309 IPC is violative of Article 14, to support the conclusion reached in P.Rathinam.

The basis of the decision in P. Rathinam, discussed above, was not supported by any of the learned counsel except Shri B.S. Malik. On the basis of the decision in P.Rathinam it was urged that Section 306 also is violative of Article 21, as mentioned earlier. On the view we have taken that Article 21 does not include the right to die' as held in P. Rathinam, the first argument to challenge the constitutional validity of Section 306, IPC also on that basis fails, and is rejected.

Article 14 - Is it violated by Section 309, I.P.C. ?

We would now consider the constitutional validity of Section 309 with reference to Article 14 of the Constitution. In substance, the argument of Shri Ujagar Singh, Shri B.S. Malik and Shri Soli J. Sobrajee on this point is that it is a monstrous and barbaric provision which violates the equality clause being discriminatory and arbitrary. It was contended that attempted suicide is not punishable in any other civilized society and there is a strong opinion against the retention of such a penal provision which led the Law Commission of India also to recommend its deletion. Shri Sorabjee contended that the wide amplitude of Article 14 together with the right to live with dignity included in Article 21, renders Section 309 unconstitutional. It is in this manner, invoking Article 21 limited to life with dignity (not including therein the right to die') that Shri Sorabjee refers to Article 21 along with Article 14 to assail the validity of Section 309, IPC. The conclusion reached in P. Rathinam is supported on this ground.

We have formed the opinion that there is no merit in the challenge based even on Article 14 of the Constitution. The contention based on Article 14 was rejected in P. Rathinam also. It was held therein as under: <SLS> "The Bombay High Court held Section 309 as violation of Article 14 also mainly because of two reasons. First, which act or acts in series of acts will constitute attempt to suicide, where to draw the line, is not known - some attempts may be serious while others non-serious. It was stated that in fact philosophers, moralists and sociologists were not agreed upon what constituted suicide. The want of plausible definition or even guidelines, made Section 309 arbitrary as per the learned Judges. Another reason given was that Section 309 treats all attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made.

The first of the aforesaid reasons is not sound, according to us, because whatever differences there may be as to what constitutes suicide, there is no doubt that suicide is intentional taking of one's life, as stated at p.1521 of Encyclopaedia of Crime and Justice, Vol. IV, 1983 Edn. Of course, there still exists difference among suicide researchers as to what constitutes suicidal behavior, for example, whether narcotic addiction, chronic alcoholism, heavy cigarette smoking, reckless driving, other risk-taking behaviors are suicidal or not. It may also be that different methods are adopted for committing suicide, for example, use of fire-arm, poisoning especially by drugs, overdoses, hanging, inhalation of gas. Even so, suicide is capable of a broad definition, as has been given in the aforesaid Webster's Dictionary. Further, on a prosecution being launched it is always open to an accused to take the plea that his act did not constitute suicide where-upon the court would decide this aspect

also.

Insofar as treating of different attempts to commit suicide by the same measure is concerned, the same also cannot be regarded as violative of Article 14, inasmuch as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. It is worth pointing out that Section 309 has only provided the maximum sentence which is up to one year. It provides for imposition of fine only as a punishment. It is this aspect which weighed with the Division Bench of Andhra Pradesh High Court in its aforesaid decision to disagree with the Bombay view by stating that 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.

We agree with the view taken by the Andhra Pradesh High Court as regards Section 309 qua Article 14." (Page 405) (emphasis supplied) <SLE> With respect, we are in agreement with the view so taken qua Article 14, in P. Rathinam.

We have already stated that the debate 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.

The reported decisions show that even on conviction under Section 309, IPC, in practice the accused has been dealt with compassion by giving benefit under the Probation of Offenders Act, 1958 or Section 562 of the Code of Criminal Procedure, 1908 corresponding to Section 360 of the Criminal Procedure Code, 1973 : Mt. Barkat Vs. Emperor, AIR 1934 Lah. 514; Emperor Vs. Dwarka Pooja, 14 Bom.L.R. 146; Emperor Vs. Mt. Dhirajia, AIR 1940 All. 486; Ram Sunder Vs. State of Uttar Pradesh, AIR 1962 All. 262; Valentino Vs. State, AIR 1967 Goa 138; Phulbhai Vs. State of Maharashtra, 1976 Crl. L.J. 1519; Radharani Vs.State of M.P., AIR 1981 SC 1776; Rukhmina Devi Vs. State of U.P., 1988 Crl.L.J. 548. The above quoted discussion in P. Rathinam qua Article 14 is sufficient to reject the challenge based on Article 14.

We may briefly refer to the aid of Article 21 sought by Shri Sorabjee to buttress the challenge based on Article 14. We have earlier held that right to die' is not included in the `right to life' under Article 21. For the same reason, right to live with human dignity' cannot be construed to include within its ambit the right to terminate natural life, at least before commencement of the natural process of certain death. We do not see how Article 21 can be pressed into service to support the challenge based on Article 14. It cannot, therefore, be accepted that Section 309 is violative either of Article 14 or Article 21 of the Constitution.

It follows that there is no ground to hold that Section 309, IPC is constitutionally invalid. The contrary view taken in P. Rathinam on the basis of the construction made of Article 21 to include

therein the right to die' cannot be accepted by us to be correct. That decision cannot be supported even on the basis of Article 14. It follows that Section 309, IPC is not to be treated as unconstitutional for any reason.

Validity of Section 306 I.P.C.

The question now is whether Section 306, IPC is unconstitutional for any other reason. In our opinion, the challenge to the constitutional validity of Section 309, IPC having been rejected, no serious challenge to the constitutional validity of Section 306 survives. We have already rejected the main challenge based on P. Rathinam on the ground that `right to die' is included in Article 21.

It is significant that Section 306 enacts a distinct offence which is capable of existence independent of Section 309, IPC. Sections 306 and 309 read as under: <SLS> Section 306:

"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 which may extend to ten years. and shall also be liable to fine."

Section 309:

"309. 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."

<SLE> 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. The arguments which are advanced to support the plea for not punishing the person who attempts to commit suicide do not avail for the benefit of another person assisting in the commission of suicide or in its attempt. This plea was strongly advanced by the learned Attorney General as well as the amicus curiae Shri Nariman and Shri Sorabjee. We find great force in the submission.

The abettor is viewed differently, inasmuch as he abets the extinguishment of life of another persons and punishment of abetment is considered necessary to prevent abuse of the absence of such a penal provision. The Suicide Act, 1961 in the English Law contains the relevant provisions as under : <SLS> "1. Suicide to cease to be a crime The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated.

NOTE Suicide. "Felo de se or suicide is, where a man of the age of discretion, and compos mentis, voluntarily kills himself by stabbing, poison or any other way" and was a felony at common law: see 1 Hale PC 411-419, This section abrogates that rule of law. but, by virtue of s 2(1) Post, a person who aids abets, counsels or Procures the suicide or attempted suicide of another is guilty of a statutory offence.

The requirement that satisfactory evidence of suicidal intent is always necessary to establish suicide as a cause of death is not altered by the passing of this Act : see R v Cardiff Coroner, ex p Thomas [1970] 3 All ER 469, [1970] 1 WLR 1475.

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2. Criminal liability for complicity in another's suicide (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." (emphasis supplied) <SLE> This distinction is well recognized and is brought out in certain decisions of other countries. The Supreme Court of Canada in Rodriguez v. B.C. (A.G.), 107 D.L.R. (4th Series) 342, states as under :-

<SLS> "Sanctity of life, as we will see, has been understood historically as excluding freedom of choice in the self- infliction of death and certainly in the involvement of others in carrying out that choice. At the very least, no new consensus has emerged in society opposing the right of the state to regulate the involvement Of others in exercising power over individuals ending their lives." (at page 389) <SLE> Airedale N.H.A. Trust v. Bland, 1993 (2) W.L.R. 316 (H.L.), was a case relating to withdrawal of artificial measures for continuance of life by a physician. Even though it is not necessary to deal with physician assisted suicide or euthanasia cases, a brief reference to this decision cited at the Bar may be made. In the context of existence in the persistent vegetative state of no benefit to the patient, the principle of sanctity of life, which it is the concern of the State, was stated to be not an absolute one. In such cases also, the existing crucial distinction between cases in which a physician decides not to provide, or to continue to provide, for his patient, treatment or care which could or might prolong his life, and those in which he decides, for example, by administering a lethal drug, actively to bring his patient's life to an end, was indicated and it was then stated as under :- <SLS> ".....But it is not lawful for a doctor to administer a drug to his patient to bring about his death, even though that course is prompted by a humanitarian desire to end his suffering, however great that suffering may be : see Reg. v. Cox (unreported), 18 September, 1992. So to act is to cross the Rubicon which runs between on the one hand the care of the living patient and on the other hand euthanasia - actively causing his death to avoid or to end his suffering. Euthanasia is not lawful at common law. It is of course well known that there are many responsible members of our society who believe that euthanasia should be made lawful but that result could, I believe, only be achieved by legislation which expresses the democratic will that so fundamental a change should be made in our law. and can, if enacted, ensure that such legalized killing can only be carried out subject to appropriate supervision and control. ....."

(emphasis supplied) (at page 368) <SLE> The desirability of bringing about such a change was considered to be the function of the legislature by enacting a suitable law providing therein adequate safeguards to prevent any possible abuse.

The decision of the United States Court of Appeals for the Ninth Circuit in Compassion in Dying vs. State of Washington, 49 F.3d 586, which reversed the decision of United States District Court. W.D. Washington reported in 850 Federal Supplement 1454, has also relevance. The constitutional validity of the State statute that banned physician assisted suicide by mentally competent. terminally ill adults was in question. The District Court held unconstitutional the provision punishing for promoting a suicide attempt. On appeal. that judgment was reversed and the constitutional validity of the provision was upheld.

This caution even in cases of physician assisted suicide is sufficient to indicate that assisted suicides outside that category have no rational basis to claim exclusion of the fundamental of sanctity of life. The reasons assigned for attacking a provision which penalizes attempted suicide are not available to the abettor of suicide or attempted suicide. Abetment of suicide or attempted suicide is a distinct offence which is found enacted even in the law of the countries where attempted suicide is not made punishable. Section 306 I.P.C.enacts a distinct offence which can survive independent of Section 309 in the I.P.C. The learned Attorney General as well as both the learned amicus curiae rightly supported the constitutional validity of Section 306 I.P.C.

The Bombay High Court in Naresh Marotrao Sakbre and Another vs. Union of India and others, 1895 Crl.L.J. 96, considered the question of validity of Section 306 I.P.C. and upheld the same. No decision holding Section 306 I.P.C. to be unconstitutional has been cited before us. We find no reason to hold either Section 309 or Section 306 I.P.C. to be unconstitutional.

For the reasons we have given, the decisions of the Bombay High Court in Maruti Shri Pati Dubal vs. State of Maharashtra, 1987 Crl. L.J. 743, and of a Division Bench of this Court in P. Rathinam vs. Union of India and Anr., 1994 (3) SCC 394, wherein Section 309 I.P.C. has been held to be unconstitutional, are not correct. The conclusion of the Andhra Pradesh High Court in Chenna agadeeswar and another vs. State of Andhra Pradesh, 1988 Crl.L.J. 549, that Section 309 I.P.C. is not violative of either Article 14 or Article 21 of the Constitution is approved for the reasons given herein. The questions of constitutional validity of Sections 306 and 309 I.P.C. are decided accordingly, by holding that neither of the two provisions is constitutionally invalid.

These appeals would now be listed before the appropriate Division Bench for their decision on merits in accordance with law treating Sections 306 and 309 I.P.C. to be constitutionally valid.