

IS SECTION 309 OF INDIAN PENAL CODE ULTRA VIRES OF THE INDIAN CONSTITUTION?

By

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This issue has come into the *scenario* with recent National Law Commission recommendations after more than a decade. The National Law Commission headed by Justice *Laxmanan* recommended to the Parliament to make an enactment declaring Section 309 of IPC as *ultra vires* of the Indian Constitution which prescribed the punishment for attempting to commit suicide.

Section 309 of Indian Penal Code : “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”.

The Law Commission of India in its 42nd Report (1971) recommended to repeal of Section 309 of IPC being of the view that this penal provision is “harsh and unjustifiable”. The recommendation was accepted by the Government of India and the Indian Penal Code (Amendment) Bill, 1972 was introduced in the Rajya Sabha to repeal Section 309. The Bill was referred to a Joint Committee of both the Houses and after receipt of its report, the Bill was passed with some changes by the Rajya Sabha in November, 1978. The Bill so passed was pending in the Sixth Lok Sabha when it was dissolved in 1979, because of which the Bill lapsed. Since then proposals for reintroducing legislation in Parliament on the lines of the lapsed Bill are under consideration.

This is the most controversial section in the Indian Penal Code, the Constitutional validity has been challenged before the Courts many a time. The contention of the petitioners always that Article 21 of the

Constitution guarantees right to life which also includes implied expression of right to die. But Section 309 of IPC punishes the persons who attempts to commit suicide. The petitioners always contended that attempting to commit suicide means exercising the fundamental right to die, and so that attempt should not be punished, and as so Section 309 prescribed the punishment for attempting to commit suicide, shall be declared unconstitutional.

For the first time Section 309 IPC has been declared unconstitutional by Justice *Sachar* of Delhi High Court, while deciding batch cases in the year 1985. “It is ironic that Section 309, IPC still continues to be in Our Penal Code..... 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 man to psychiatric clinic it gleefully sends him to mingle with criminals. The continuance of Section 309, IPC is an anachronism unworthy of a human society like ours. Medical clinics for such social misfits certainly but police and prisons never. The very idea 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..... No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309, IPC

which has no justification right to continue to remain on the statute book". Subsequently in *Maruthi Shripathi Dubal v. State of Maharashtra*, 1987 Cri.LJ 743 (Bom.), the Bombay High Court declared Section 309 of IPC as unconstitutional, being violative of Article 21 thereof and must be struck down. Discussions made elaborately on the validity of the punishment for attempted to commit suicide. The fundamental rights have their positive as well as negative aspects. If this is so, logically it must follow that right to live as recognized by Article 21 will include also a right not to live or not to be forced to live. To put it positively it would include a right to die, or to terminate one's life. There is nothing unnatural about the desire to die and hence with the right to die. Whatever the circumstances which induce a person to end or terminate his or her life, the act of termination of life is the act of that individual. It is no less his than his act of living. The confusion between the circumstances which impel or urge a person to end his life and the termination of life often leads one to the mistaken conclusion that the desire to end one's life itself is not natural.

Section 309 of IPC is violative of Article 14 of the Constitution:

Sawanth and *Kolse-Patil*, JJ., broadly discussed Section 309 and declared it is vulnerable on ground of violation of Article 14 of the Constitution. The language of Section 309 is sweeping in its nature. It does not define suicide. In a broader sense, any act which takes a person further from his life and nearer to death can be regarded as felony. The Hon'ble Division Bench opined that the provisions of Section 309 arbitrary and violative of Article 14. Arbitrariness and equality are enemies of each other. The equality guaranteed by Article 14 stands further violated by the provisions of Section 309 because it treats all attempts to commit suicide by the same measure without regard to the circumstances in which the attempts are made.

There further no situation or no experience to which suicide is the only possible reaction. Different persons react differently to different situations and experiences, depending upon their personality traits. That is why a suicidal act cannot be explained by the situation alone and all persons in the same situation and facing the same experiences cannot be painted by the same brush. Suicide involves no damage to person or property of others. If destruction of one's property or its deliverance to others for a cause or no cause is not an offence, there is no reason why sacrifice of one's body for a cause or without a cause or for the mere deliverance of it should be regarded as an offence. Much less an attempt at doing so. One's life, one's body with all its limbs are certainly one's property and he is the sole master of it. He should have the freedom to dispose it of as and when he desires. Even at present the statutes permit donation by individual of certain parts of his body under certain conditions, thereby recognizing the right of the individual to deal with his body as he chooses. Therefore, the provisions of Section 309, being arbitrary are *ultra vires* of Article 14 of the Constitution.

If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the attempts. 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. No deterrence is further 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. Thus in no cause the punishment serves the purpose and in some cases it is bound to prove self-defeating and counter-productive. On this account also the provisions of the section are unreasonable and arbitrary.

Section 309 of IPC violates Article 21 of the Constitution:

Article 21 of the Constitution reads as follows : “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Hon’ble Division Bench elaborately discussed the Constitutional validity of Section 309 of the Indian Penal Code. In Article 21 “Life” means and includes “livelihood”. The Hon’ble Division Bench also opined that personal liberty as used in Article 21 has been held to be a compendious term to include within itself all the varieties of rights which go to make personal liberties of the man other than those dealt with in clause (d) of Article 19(1). The burden to justify the curtailment thereof must squarely rest on the State.

Article 21 not only a protection against an arbitrary deprivation of life and personal liberty but also positive rights to enable an individual to live life with human dignity and it also recognizes right to live as a positive right as well as negative aspects. 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.

Suicide or attempt to commit it as such has thus never been an object of abhorrence or condemnation which would be so if life by itself was considered reverend. It is the cause of its termination or the condition in which it is terminated which has always and everywhere determined the societal attitude towards it. The Hon’ble Court also expressed its opinion about the misconception of the

concepts of suicide and explained to the question, if attempt to commit suicide is not considered as offence, it must logically follow that aiding and abetting the attempt must also not be an offence. This will open door for euthanasia or mercy killing in particular and death baiters in general. The Hon’ble Court answered to this question, as this arises firstly out of a misconception of the concepts of suicide and mercy killing. Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one’s own act and without the aid or assistance of any other human agency. The Penal Code has not defined the suicide anywhere so an attempt to commit suicide and an abetment of such attempt is bound to pose problems of definition in practice. The problem is therefore more imaginary than real. So the Hon’ble Bench were of the view that on this count also Section 309 is vulnerable, the equality guaranteed by Article 14 stands further violated by the provisions of Section 309 because it treats all attempts to commit suicide by the same measure without regard to the circumstances, in which the attempts are made.

After elaborate discussions the Hon’ble Division Bench has come to the conclusion that the provisions of Section 309 IPC being arbitrary are *ultra vires* Articles 14, 19 and 21 of the Constitution and it must be struck down. The Andhra Pradesh High Court in *Chenna Jagadeeswar and another v. State of A.P.*, 1988 Cri.LJ 549 held by Mrs. *Amareswari* and *Pandurangarao, JJ.*, that Section 309 IPC is valid and does not offend Articles 19 and 21 of the Constitution. It cannot be said that the right to life impliedly guaranteed by the Constitution (as the right to life is not specifically mentioned in Article 19 or 21) includes right not to live is unconstitutional. If Section 309 of IPC is to be held illegal then Section 306 of IPC also could not survive and the people who actively assist or induce persons to commit suicide may go scot-free. It is true that a society which is

indifferent to improving the living conditions of distressed persons cannot with justification punish them at self-help or self-deliverance. The Hon'ble Bench also expressed a doubt whether it is right for the State to adopt the position that those unable to lead a dignified life are welcome to depart it.

The Hon'ble Bench in this context quoted an expression of an eminent sociologist of the 19th century a comprehensive definition of suicide, "the term suicide is applied to all cases of deaths resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result. An attempt is an act thus defined but falling short of actual death". There may be so many reasons for committing suicide. There may be many who are prone to egoistic tendencies and they cherish their individualism as sacrosanct, they feel dejected. Their will to live and struggle to survive wane quickly. High individualism may lead to suicide. If the society imposes regulation on individuals and when these check valves weaken, the individuals become nameless and anonymous entities and let themselves go without restraint only to land in the pit of dejection and depression. Sometimes fatalism leads to suicide when there is no escape from discipline and regimentation people may resort to suicide. Many problems like poverty, deprivation, disappointment and several social maladjustments are sought to be solved by suicide.

The Hon'ble Bench opined that, in Articles 19 and 21 of the Constitution the right to life is not specifically mentioned. But, in a broader sense, unless a man is assured of physical existence there can be no other fundamental right and since the State exists for the common good of the citizens to life though it may not explicitly explained. In these circumstances it is rather difficult to hold that the right to life impliedly guaranteed by the Constitution includes the right to die. Many deaths are committed due to unhealthy co-existence of the *nouveau riche*. But on that

social ground, the offences against property cannot be pardoned. Can the parents who are responsible for the life of their children be said to have a right to dispose of the life of their children because they have created it. Then there are cases of hunger strikes, threatened self-immolations and other potentially employed situations. If Section 309, IPC held to be *ultra vires*, no action can be taken against the people resorting to these practices, on the ground that they have a right to dispose of themselves. It is true that, if a person is sick, we treat him, we do not punish him. Every case under Section 309, IPC may not lead to a punishment. Section 309, IPC by no means mandates that a Court should punish attempted suicide, it only lays down the upper limits of such punishment. But there are other acts which provides a discretion to the Court, Sections 3, 4 and 13 of the Probation of Offenders Act, 1958 confers a wide discretion on Court either to bind such person to Psychiatric care or release him with an admonition. Section 12 of the Act enables Court to ensure that no stigma or disqualification should attach to such a person notwithstanding anything contained in any other law. The Courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention. India is still a country where its womenfolk who constitute the majority are illiterate and tradition-bound. The community, caste and family still have the precedents over the individual. In this environment the women may be subjected to barbaric and inhuman pressures.

The Hon'ble Court expressed that if Section 309 is to be held illegal, there are highly doubtful whether Section 306 IPC could survive. Thus people who actively assist and induce persons to commit suicide may go scot-free. It is true that a society which is indifferent to improving the living conditions of distressed persons cannot with justification punish them at self-help or self-

deliverance. But the question is whether it is right for the State to adopt the position that those unable to lead a dignified life are welcome to depart it. It is a paradox that society will neither provide sustenance nor allow the sufferer to die. In this complexity of social maladjustments, the best safeguard is the Court which should exercise and temper its judgment with humanity and compassion. In a country like India, where the individual is subjected to tremendous pressures, it is wise to err on the side of caution. To confer a right to destroy oneself and to take away from the purview of the Courts to enquire into the act and would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them.

Basing on the above said reasons the Hon'ble High Court of Andhra Pradesh hold that Section 309, IPC is valid and does not offend Articles 19 and 21 of the Constitution of India.

In *P. Rathinam/Nagabhusan Patnaik v. Union of India and another*, AIR 1994 SC 1844(1) Hon'ble R.M. Sabai and B.L. Hansaria, JJ., hold that Section 309 of IPC is cruel and irrational provision, violative of Article 21- Effaced from statute attempted suicide has no baneful effect on society.

The Apex Court discussed the issue at length by giving reasons why Section 309 is violative of Article 21 and *ultra vires* of the Constitution. 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. Agony and ignominy undergone would be

far more painful and deterrent than a fine which too may not come to be released on probation. The Hon'ble Bench opined that let the laws humanize by making the Section 309 cease to be cruel, and what is needed to take care of suicide prone persons are soft words and wise counselling (of a psychiatrist), and not stony dealing by a Jailer following harsh treatment meted out by a heartless prosecutor.

The Supreme Court sought to do through this judgment an attempt to "search for the social dynamics of criminal law, the functional theory of sentencing and the therapeutic reach of punitive arts, to catch up with social sciences relevant too criminal justice and to link up prison jurisprudence with constitutional roots. It has hold by the Apex Court that, euthanasia is not much related to the act of committing suicide inasmuch as wherever passive euthanasia has been held to be permissible under the law, one of the requirements insisted is consent of the patient or his relations in case the patient be not in a position to give voluntary consent. So, if one could legally commit suicide, he could also give consent for his being allowed to die. But then, the legal and other questions relatable to euthanasia are in many ways different from those raised by suicide. One would therefore, be right in making distinction logically and in principle between suicide and euthanasia, though it may be that if suicide is held to be legal, the persons pleading for legal acceptance of passive euthanasia would have a winning point. The justification for allowing persons to commit suicide is not required to be played down or cut down because of any encouragement to persons pleading for legislation of mercy killing.

The Apex Court opined about the abetment of suicide Section 306 and Section 309 – validity – Self killing is conceptually different from abetting others to kill themselves – Thus apprehension whether Section 306 would survive on quashing provisions under

Section 309-Not proper. As regards the persons aiding and/or abetting suicide, the law can be entirely different. Thus the view that if Section 309 were to be held bad, it is highly doubtful whether Section 306 could survive would not be tenable, as self-killing is conceptually different from abetting others to kill themselves. They stand on different footing, because in one case a person takes his own life, and in the other a third person is abetted to take his life.

In this context Justice *Hansaria* quoted *Gandhiji's* words : "death is our friend, the trust of friends. He delivers us from agony. I do not want to die of a creeping paralysis of faculties- a defeated man". Also quoted the words of *William Ernest Henley* "I am the master of my fate, I am the captain of my soul". The Apex Court opined that it would be worthwhile to note that of *Shri V.S. Deshpande* after his retirement as Chief Justice of Delhi High Court had expressed his view in his article titled "To be or not to be" took the view that if Section 309 is restricted in its application to attempt to commit suicide which are cowardly and which are unworthy, then only this section would be in consonance with Article 21, because, if a person having had no duties to perform to himself or to others when he is terminally ill, decides to end his life and relieve himself from the pain of living and the others from the burden of looking after him, prosecution of such a person would be adding insult to injury and it was asked "Should a Court construe Section 309, IPC to apply to such cases?"

Apart from the judicial and legal thinking on the subject relating to justification and permissibility of punishing a man for attempting to commit suicide, there are proponents of the view that euthanasia should be permitted by law.

The Apex Court hold the elaborate discussions on the validity of Section 309 of IPC. Suicide is intentional taking of one's life, as stated at page 1521 of Encyclopedia

of Crime and Justice, Volume IV, 1983 Edn. 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 upto one year, it provides for imposition of fine only as a punishment. The Apex Court agree with the view taken by the Andhra Pradesh High Court as regards Section 309 *qua* Article 14. But the Bombay Bench itself was more involved Article 21 and violation of it by Section 309. The Apex Court put 16 questions on their selves including, has Article 21 any positive content or is it merely negative in its reach?, has a person residing in India has a right to die?, which is suicide committed?, how suicide-prone persons should be dealt with? *etc.*, and the same were answered accordingly. The Hon'ble Bench viewed on Article 21 that right to live of which speaks can be said to bring it its trail the right not to live a forced life.

While on the question of sentencing it would be rewarding to note that sentencing has been regarded as a subtle art of healing, and the legal and political people uninstructed in the humanist strategy of reformation, fail even on first principles. Justice *Krishna Iyer* has stated that puzzles a Judge or a Home Secretary to be told in Shavian Paradox "If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him. But men are not improved by injuries". The Court while answering the question how suicide-prone persons should be dealt with, the answer has to be that there can be no justification to prosecute such sacrifices of their lives. Similar approach has to be adopted towards students who jump into wells after having failed in examinations, but survive. The approach cannot be different *qua* those girls/ boys who resent arranged marriages and prefer to die, but ultimately fail. If a woman

who committed suicide because she had been raped, would it not be adding insult to injury, and insult manifold, to require such a woman in case of her survival, to face the ignominy of undergoing an open trial during the course of which the sexual violence committed on her which earlier might have been known only to a few would become widely known, making the life of the victim still more intolerable. It is not cruel to prosecute such a person? What is required is to reach the soul to stir it to make it cease to be cruel. Let us humanize our laws. It is never late to do so. Suicide, as has already been noted, is a psychiatric problem and not a manifestation of criminal instinct. Dr. Dastoor defined suicide as it is really "Call for help", to which we shall add that there is no "call for punishment". So what is needed to take care of suicide-prone persons are soft words and wise counselling (of a psychiatrist), and not stony dealing by a Jailor following harsh treatment meted out by a heartless prosecutor.

The Apex Court while answering the question of morality held that it normally arises with laws relating to sex and acts evincing moral depravity like cheating, but as the question of birth and death has also moral significance, as opined by *Mary Warnock*, whose views in this regard has been noted in "Laws and Morals". The Hon'ble Court briefly advert to the moral aspect as well relating to suicide. It is the sanctity of human life which is said to be defaced when one commits suicide and the question of morality, therefore arises. The Hon'ble Bench also discussed that is suicide against public policy? and answered that it would be a uninformed man in law who would say with any degree of definiteness that commission of suicide is against public policy; and as such a person attempting to commit it acts against public policy. The Apex Court hold that abetment of suicide is entirely different, Bombay judgment has rightly made this distinction. It is for this reason, that the

apprehension raised by the Andhra Pradesh High Court in its judgment in *Jagadeswar and another v. State of A.P.*, 1988 Cri.LJ 549, does not seem to be justified. The Court so did not agree with the view of the Andhra Pradesh High Court in that if Section 309 were to be held bad, it is highly doubtful whether Section 306 could survive, as self-killing is conceptually different from abetting others to kill themselves. They stand on different footing, because in one case a person takes his own life, and in the other a third person is abetted to take his life.

An attempt to commit suicide was a common law misdemeanours. So basing on the elaborate discussions on each and every aspect it hold that Section 309 of IPC 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 it causes no harm to others, because of which State's interference with the personal liberty of the concerned persons is not called for, and so Section 309 of IPC 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 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 wave length.

In *Smt. Gian Kaur v. State of Punjab and other batch matters*, 1996 Cri.LJ 1660 (SC), hold by *J.S. Verma, G.N. Ray, N.P. Singh, Faizan Uddin and G.T. Nanavathi, JJ.*, that Constitution of India Article 21 – right to life, does not include right to die – Extinction of life is not included in Protection of life – thus provision penalizing attempt to commit suicide – not violative of Article 21. The Apex Court hold detailed discussions in this

issue. 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 it is 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'. There is 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 include the 'right to die'. Thus it cannot be said that Section 309 IPC, providing penalty for attempt to commit suicide is violative of Article 21.

The Apex Court also opined that Section 309, IPC providing for imposition of punishment for attempt to commit suicide is not violative of Article 14 of the Constitution. The debate on the desirability of retaining 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. 'Right to die' is not included in the 'right to life' under Article 21. Thus '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. Article 21 cannot be pressed into service to support the challenge based on Article 14. It cannot, therefore, be said that Section 309 is violative either of Article 14 or Article 21 of the Constitution.

The Hon'ble Constitution Bench also discussed widely on validity of Section 306 of IPC, punishment for abetment of suicide is not unconstitutional. 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 IPC, enacts a distinct offence which can survive independent of Section 309 in the IPC. 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, IPC, which requires reconsideration of the decision in *P. Rathinam* (1994 AIR SCW 1764), the Division Bench before which these appeals came up for hearing has referred the matter to a Constitution Bench for deciding the same. Learned Attorney General of India, Shri *Fali S. Nariman* and Shri *Soli J. Sorabjee* appeared as *amicus curiae* in this matter and rendered grant assistance to enable the Constitution Bench to decide this ticklish and sensitive issue. 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 lead 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. The Constitution Bench made a reference to what *Ala.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 Law and Medicine and Psychiatry. One of the basic theories of the lecture of Professor *Stone* was that right to die inevitably leads to the right to commit suicide.”

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 ‘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. The Constitution Bench opined that it is significant that Section 306 enacts a distinct offence which is capable of existence independent of Section 309, IPC. Section 306 prescribes punishment for abetment of suicide, while Section 309 punishes attempt to commit suicide is outside the purview of Section 306 and it is punishable only under Section 309 and 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 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. The abettor is viewed differently, inasmuch as he abets the extinguishment of life of another person, and punishment of abetment is considered necessary to prevent abuse of the absence of such a penal provision. Suicide to cease to be a crime for this question the Bench answered that the rule of law whereby it is a crime for a person to commit suicide is hereby abrogated. 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 suicide intent is always necessary to establish suicide as a cause of death is not altered. “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.

The Constitutional Bench after made elaborate discussions on this issue in all aspects taking into considerations of previous judgments delivered by different High Courts and as well as the Apex Court also came to conclusion that the High Court of Andhra Pradesh in *Chenna Jagadishwar and another v. State of A.P.*, 1988 Cri. LJ 549, is approved. The questions of constitutional validity of Sections 306 and 309 IPC are decided accordingly, by holding that neither of the two provisions are constitutionally invalid.

If we see into the past whether the act of committing suicide or attempting to commit suicide is an offence or not ? From the

history like Laws of Manu we came to know that suicide was regarded as permissible in some circumstances in ancient India. According to Manu dharma a man may undertake the mahaprashtna (great departure) on a journey which ends in death, when he is incurably deceased or meets with a great misfortune, and that, because it is taught in Sastras, it is not opposed to the Vedic Rules which forbid suicide. According to Apastambha it is 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.

Looking at the offence of attempting to commit suicide, it has been observed by an English writer : *H. Romily Fiddes* : "Suicide is 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.

The humanitarianism is the throbbing principle of legislation. In the historical perspective, one can easily appreciate the complexities and intricacies of legislation which the present Legislatures are to face. Besides the ordinary laws which safeguard the rights and liberties of the individual, there are certain fundamental laws which ordinary legislation may not change. The fundamental principles on which the political life of the people is based on individuality, equality and justice. After securing the life, and liberty of

the State and of the individual laws and legislations take on the task of serving and promoting the good life of the State and the people. For good life, morality is necessary and to maintain morality legislation is a must. Legislation is the framework which is required to be made for good life.

Protection of society is the basic reason of treating some acts as crimes and it is one of the arms of punishment. If the State not provides life with human dignity of its people it also cannot protect the society from immoral activities. The State is entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used by physical force in the form of legal penalties or the moral coercion of public opinion. Though a person over his body and mind is sovereign if he is willing to terminate his life the State has to control such sovereignty by treating the act of termination of life is an offence. Otherwise the person who is willing to end his life would think that his act is right. There would be no control over such termination of lives and may cause a great loss to the humanitarianism. The act of attempting suicide, or committing suicide is against public policy and it effects banefully on the society. If the State not recognizes the act of attempt to commit suicide is an offence of the person who attempts to commit suicide under the forced circumstances may attempt repeatedly and there may not a change with his attitude of terminating his life by unnatural means. There is no doubt that a State has absolute obligation of improving the living conditions of distressed persons by punishing them at self-help or self-deliverance for their better life. The best safeguard is the Court which should exercise and temper its judgment with humanity and compassion.

In a country like India, where the individual is subjected to tremendous pressures, it is wise err on the side of caution. To confer a right to destroy oneself and to take

away from the purview of the Courts to enquire into the act would be one step down in the scene of human distress and motivation. It may lead to several incongruities and it is not desirable to permit them. The difficult task of crime prevention would not therefore permit the solution to be put into a straight jacket, it has to be modulated and moulded as per time and crime. Article 21 of the Constitution of India says "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Constitutional jurists one who are supporting Section 309 of IPC violating the Constitution must think in deep about Article 21, then

they can see that exceptions in fundamental rights are more worthy than enjoyment of fundamental rights. One's right is always should be treated as other's obligation. For the purpose of common good like India a democratic country will always look into the majority peoples welfare and a State cannot act upon minority people's benefit. Lastly it is most important that a State must impose regulations to prevent immoral activities like suicide, otherwise there would be no check over the unnatural termination of one's own life, the people who are attempting to commit suicide when they are in problems like poverty, deprivation, disappointment and several social mal-adjustments.

JUDICIAL RESPONSE TOWARDS RESERVATION POLICY IN INDIA - A PERSPECTIVE

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Introduction:

Since the day of the Constitution of India came into being, Judiciary is playing a crucial role in interpreting and protecting the interest of various weaker sections of the society in accordance with the constitutional mandate. During these 1 year, Judiciary has been actively discharging its Constitutional duties to achieve the goals enshrined in the preamble of the Constitution. Although, Judiciary has contributed more towards achieving social justice, and economic justice, yet in the field of reservation its achievement is not satisfactory. This can be seen from its first decision in *Champakam Dorairajan v. State of Madras*, wherein the Madras Government had reserved seats in State medical and engineering colleges for different communities in certain proportions on the basis of religion, race and caste. This was

challenged as unconstitutional and *ultra vires* to the Constitutional provision. But the Madras Government defended its Government Order on the ground that Article 46 of the Constitution permits the State to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and to secure them the social justice to them. The Supreme Court struck down the reservation made by the State and held that it was unconstitutional as it classified students on the basis of caste and religion which are prohibitory grounds under Article 15(1) of the Constitution. The Court also said that the Directive Principles of Article 46 by its own force has not established a principle of preference and observed that "Directive Principles of State Policy have to conform to and run as subsidiary to the chapter of Fundamental Rights.