Legal and Judicial Framework of Suicide

Suicide is an offence in some parts of the world. However while suicide has been decriminalized in some western countries. The act is still stigmatized and discouraged. In other contexts, such as ancient Rome or Medieval Japan suicide was seen as a defiant act of extreme personal freedom against perceived or actual tyrants. Although a person who has successfully committed suicide might be thought to be beyond the reach of the law (since they are dead), there could still be legal consequences. The associated matters of assisting a suicide and attempting suicide are, or have been, also dealt with by the laws of some jurisdictions.

History and general

Historically laws against suicide and mercy killing have developed from religious doctrine for example the claim that only God his right to determine when if a person will die.

In ancient Athens, a person who had committed suicide (without the approval of the state) was denied the honours of a normal burial. The person would be buried alone, on the outskirts of the city, without a headstone or marker. A criminal ordinance issued by Louis XIV in 1670 was far more severe in its punishment: the dead person's body was drawn through the streets, face down, and then hung or thrown on a garbage heap. Additionally, the all property of the person's was confiscated.

Even in modern times, legal penalties for committing suicide have not been uncommon. By 1879, English law had begun to distinguish between suicide and homicide, though suicide still resulted in forfeiture of estate. Also, the deceased were permitted daylight burial in 1882. In many jurisdictions it is a crime to assist others, directly or indirectly, to take their own life, or, in some
jurisdictions, to even encourage them to do so. Sometimes an exception applies for physician assisted suicide (PAS), under strict conditions.

**Law Relating to Suicide: Western Position**

(i) **U.K.**

Suicide (and thus also attempted suicide) was illegal under English Law but ceased to be an offence with the passing of the Suicide Act 1961; the same Act makes it an offence to assist a suicide. While the simple act of suicide is lawful the consequences of committing suicide might turn an individual event into an unlawful act, as in the case of Reeves v Commissioners of Police of the Metropolis, where a man in police custody hanged himself and was held equally liable with the police (a cell door defect enabled the hanging) for the loss suffered by his widow; the practical effect was to reduce the police damages liability by 50%. Increasingly, the term commit suicide is being consciously avoided, as it implies that suicide is a crime by equating it with other acts that are committed, such as murder or burglary.

(ii) **U.S.A.**

In the United States, suicide has never been punished as a crime nor penalized by property forfeiture or ignominious burial. Historically, various states listed the act as a felony, but all were reluctant to enforce it. By 1963, six states still considered attempted suicide a crime (North and South Dakota, Washington, New Jersey, Nevada, and Oklahoma that repealed its law in 1976). By the early 1990s only two US states still listed suicide as a crime, and these have since removed that classification. In some U.S. states, suicide is still considered an unwritten "common law crime," that is, a crime based on the law of old. England as stated in Blackstone's Commentaries. So held the Virginia Supreme Court in Wackwitz v. Roy in 1992. As a common law crime, suicide can bar recovery for the family of the suicidal person in a lawsuit unless the
suicidal person can be proven to have been "of unsound mind." That is, the suicide must be proven to have been an involuntary, not voluntary, act of the victim in order for the family to be awarded money damages by the Court. This can occur when the family of the deceased sues the caregiver (perhaps a jail or hospital) for negligence in failing to provide appropriate care.

(iii) Europion Countries

a) In Netherland, being present and giving moral support during someone's suicide is not a crime; neither is supplying general information on suicide techniques. However, it is a crime to participate in the preparation for or execution of a suicide, including supplying lethal means or instruction in their use.

b) Suicide was not an offence under Scots Law thus there was no offence committed by attempting suicide as there was in England and Wales. A person who assists a suicide might be charged with murder, culpable homicide or no offence at all depending upon the facts of each case.

Law Relating to Suicide : Indian Position

Suicide has been an act of condemnation through the ages. People have been killing themselves from the beginning of recorded history. While there can be no end to this debate on account of the existing differences of opinion in religious, social, cultural and legal aspects of the act to attempt suicide, however, it can be said that by declaring attempted suicide a penal offence, the Indian Penal Code upholds the dignity of human life, because human life is as precious to the state, as it is to the holder and state can not turn a blind eye to a person in attempting to kill himself.

(i) Suicide and Section 305 of Indian Penal Code :

Abetment of Suicide of child or insane person

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits
suicide, whoever abets the commission of such suicide shall be punished, with death\textsuperscript{7} [imprisonment for life] or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

(a) **Analogous law** - With reference to the Section 305 Indian Penal Code the Law Commission wrote: "It seems to us that the rule would be applied in these clauses chiefly in such a case as this, where a person legally bound to take care of the person of another, has by an illegal omission of his duty intentionally given him opportunity or permitted him to obtain the means of killing himself. It would apply also, we conceive, in the case of a person seeing another preparing to destroy himself, say by hanging, and allowing him to accomplish his purpose without any attempt to prevent him, if, as may be expected, the law of procedure makes it common duty incumbent upon all men to assist to preventing offences about to be committed in their presence. The intention here would be inferable from the circumstances. In the former case, collateral proof of the Intention would be requisite. But we apprehend that it is active aid which is principally intended in these clauses, and to which the higher penalties are meant to be applied."\textsuperscript{8} The age limit at eighteen years is fixed in accordance with the law of majority, a person under that age being incompetent to give consent.\textsuperscript{9}

(b) **Principle** - This Section relating to the abetment of suicide only applies when the suicide is in fact committed. The general law of abetment is thus wider and would be inapplicable in such a case. But the same elements which constitute abetment must also be present here. Having regard to the incapacity of the persons described the question of concurrence or consent is immaterial. And in such a case, except in the case of the minor, there could be no question of punishing them as principal offenders for an attempt under Section 309 of Indian Penal Code.

(c) **Abetment of person under disability** - Suicide is self-murder. As such it is an offence for which the offender cannot be brought to justice. The only chance to punish him is when it stops short with an attempt. The abettors of
suicides generally are punished under the next Section. This Section only refers to those who abet minors and persons non compos mentis to self-destruction. Such persons would be as much amenable to the provisions of the next Section, but this Section is intended to cover cases which may not fall exactly within the terms of the next Section. While this Section would more appropriately apply to criminal negligence or omission the next Section applies to all abettors generally.

It will be observed that this Section applies only when the person abetted commits suicide. There must then be proof that the death of the person dead was suicide. If it was a natural death, there could be no abetment. Otherwise it may be a case of murder or homicide. It is not, however, necessary that the suicide should have killed himself in consequence of the abetment. It is sufficient that the accused abetted the offence.

**Abetment of suicide under Section 305 of the Indian Penal Code**

If any person commits suicide, however abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend ten years, and shall also be liable to fine.

(a) **Analogous law** - This Section punishes abetment of suicide generally. In such a case, abetment must be distinguished from what may be homicide by consent. In England, an accessory before the fact of the crime of suicide was not triable at common law, because the principal could not be tried nor was he triable under the Georgian Statute which did not make accessories triable except where they might have been tried before. But as was to be expected, this anomaly led to grave abuse, and it was removed only by the passing of the Statute of 1847. But as it is English law materially differs from the law here enacted. According to English law, If one person persuades another to kill himself, and if he persuades him to take poison, which he does in the absence of the persuader the latter is liable as a principal in the murder. But in such a case, under the Code, he will be liable as an abettor under this Section. This Section creates a special offence applicable only to the abetment of suicide
when the suicide is committed. It will not apply to a case of an attempted suicide.  

(b) **Principle** - This Section is enacted to remove a difficulty which may otherwise arise by following the anomaly of the English Common Law of punishing a person for abetment when the principal offender had placed himself beyond the reach of law. The offence of "abetment" must naturally conform to the definition of that term as given in Section 107, i.e. that is to say there must be instigation, co-operation or Intentional assistance given to the would-be suicide. It is not necessary, nor Indeed is it a part of the definition, that the suicide should have been committed in consequence of the abetment. But, In order to render a person liable as an abettor, it is, of course, necessary, as Indeed It Is in the case of abetment of any other offence, that the abettor should be something more than a mute spectator-spectator.

Suicide, no doubt is self-murder. But one committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too. But It does not follow that It Is not forbidden by the Penal Code. It is very much Indeed. Section 306 of the Penal Code punishes abetment of suicide. Section 309 punishes an attempt to commit suicide. Thus, suicide as such is no crime, as indeed, it cannot be. But its attempt is: its abetment is too. So, it may very well be said that the Penal Code does not forbid suicide.

(c) **Abetment of suicide** - As has been remarked under the last Section, suicide is self-murder. But it is only so by analogy, for an attempted suicide is not punishable under the last Section, but as a distinct offence by itself. Suicide, in fact, has a distinct place in the criminology of all countries. In England suicide is presumed to be an act of insanity and so in such cases the official verdict is couched in the formula-committed suicide while temporarily insane". It will be presently seen how far this verdict is in accordance with view of science.  

The Section applies only when a person has committed suicide. Now suicide is self-destruction and it may be accomplished in the many ways it is possible to destroy life. In order to be suicide the person who commits suicide must commit it by himself. If he is killed by another with his consent the offence
is homicide, and not suicide and the person killing is so liable.\textsuperscript{15} Between these two offences the difference may sometimes be very little; but there is difference. Suppose A and B conspire to procure B's miscarriage, and A procures arsenic, which he gives to B, which she takes and dies. Here A could only be held liable as an abettor,\textsuperscript{16} but if A had himself administered the poison to B and thus caused her death, he would have been guilty of culpable homicide. This cause suggests a difficulty, by no means easy to overcome. If B took arsenic to procure an abortion, and not to kill herself, would her death be suicide? The question was raised but not considered by Cockburn, C.J., in a case\textsuperscript{17} in which the facts were somewhat similar to those in the case supposed. There B, a married woman, separated from her husband, became pregnant by A. She thereupon went to the chemist to procure corrosive sublimate to procure abortion. As the chemist refused to sell it to her, she persuaded her paramour A to procure it for the purpose she wanted. A at first refused, but as she threatened to commit suicide, he was prevailed upon to procure her the abortive, which he did, and delivered to her. She took it and died. A was thereupon indicted for abetment: and Cockburn, C.J., directed the jury to return the verdict of guilty,\textsuperscript{17} on the authority of the last case,\textsuperscript{18} but on the point being raised whether B could under the circumstances be said to have committed suicide, the case was reserved, and the conviction was quashed on the ground that there was a marked difference between the two cases. In the former case A had persuaded B to take the poison and in this case B had persuaded A to bring it. The facts were quite consistent with the supposition that he hoped and expected that she would change her mind, and would not resort to it. The two cases being distinguishable, the Court considered it unnecessary to decide whether the woman was felo de se.\textsuperscript{19}

The conduct of the appellant as disclosed by these statements is wholly consistent with that of an innocent husband whose wife has died due to accidental burning. No immediate motive on the part of the appellant to perpetrate the crime has either been alleged or proved, on record. There is no convincing evidence available on record to show that he had even pressurised or coerced the deceased on account of the inadequacy of the dowry she had
brought or his unlawful demands for money. As per the statement of Manoj Kumar PW 9 the brother of the deceased, and that of Hargobind PW 5 her father, the relations between the appellant and the deceased were absolutely cordial even upto the time of the occurrence. The innocence of the appellant is well established from the record.¹⁰

But what was decided is instructive. In such a case the accused could not be convicted of abetment under this Section. And as regards the principal question raised, It is now settled by statute in England that a woman taking poison to procure abortion is guilty of felony.²¹ It may, perhaps, be added that in such a case there could be no question of suicide, for, in taking poison to procure abortion, the woman does not intend to destroy herself. Her sole object is limited to the purpose for which she takes the abortive, it would then be scarcely correct to say that if in such a case death ensued, she had committed suicide, though this is the view taken in the two cases already cited.²² Two persons may both agree to commit suicide, and if one dies, and the other survives by accident, the latter would be guilty of an abetment punishable under this Section, as well as of an attempt under Section 309. though in such a case he could not be sentenced to cumulative sentences.

The prisoner was indicted for the murder of his sweetheart by drowning her. It appeared that the two had cohabited for several months previous to the woman's death and the woman was with child by the prisoner. Owing to distress and poverty they both resolved to commit suicide by drowning themselves in the Thames. For that purpose they got into a boat, but finding the water shallow, they got into another boat. They then stood up and as they were talking, the prisoner found himself in the water. He struggled and got back into the boat again, and then found that the woman was gone. He searched for her with a view to saving her but she could not be found. He stated that he intended to drown himself, but had dissuaded the woman from following his example. The Judge told the jury that if they believed the prisoner's statement, they should acquit him, but they believed that both the accused and the deceased had got into the boat with the object of drowning themselves together, each encouraged
the other in the commission of a felonious act, and the survivor was guilty of murder. He also told the jury that, although the indictment charged the prisoner with throwing the sed into the water, yet if he Were present at the time she threw herself and consented to her doing it the act of the throwing was to be considered be the act of both, and so tile act Was reached by the indictment. The jury found that both the prisoner and the deceased went to the water to drown themselves and the prisoner was thereupon convicted. And upon a case reserved the Judges were clear that if the deceased threw herself into the water by the encouragement of the prisoner, and because she thought he had set her the example in pursuance of their previous agreement, he was a principal in the second degree, and was guilty of murder but as it was doubtful whether the deceased did not fall into the river by accident, it was not murder in either of them, and the prisoner was recommended for a pardon.

So in another case where the deceased and the prisoner, who had been living as husband and wife, being in very great distress, both agreed to take poison and die together, and both took a quantity of laudanum in each other's presence, after which they both lay down on the same bed, wishing to die in each other's arms, and the woman died, but the prisoner recovered. Patterson, J., told the jury that "supposing the parties In this case mutually agreed to commit suicide, and one only accomplished that object, the survivor will be guilty of murder in point of law." Of course, here he would be guilty only of abetment under this Section.

(d) No intention or positive act to instigate or aid the deceased to commit suicide-Offence not made out - There was neither any intention nor any positive act on the part of the accused to instigate her or aid her In committing suicide. The two accused persons, therefore, cannot be held guilty of the offence under Section 306 of the Indian Penal Code and their conviction on that count by the trial Court is liable to be set aside.

(e) Abetment of suicide in dowry cases - The High Court for the elaborate discussions made in its judgment has found that there is no evidence for

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recording the conviction under Section 306, I.P.C. The conclusion arrived at by the High Court reads as follows:

"Though the appellant harassed the deceased for not begetting the children and caused her mental agony, there is no evidence that just before her death there was harassment by the accused to the deceased. In the absence of such an evidence showing that due to that harassment the deceased committed suicide, it cannot be said that the accused had abetted the death of the deceased."²⁷

In this case, the prosecution evidence consisted of brothers of the deceased and that of the persons of the neighbourhood that husband used to demand money from the deceased to build a house. The neighbours of the deceased who claimed to have seen her in-laws beating her and also to have heard her cries at night time, however, did not give this information immediately to police or anybody else. The Court came to the conclusion that there being no legal evidence to establish that any of the accused abetted the deceased to commit suicide and suspicion however, strong cannot take place of the truth. The Judgment of the High Court was set aside and accused were acquitted of the charge under Section 306, I.P.C.²⁸

(f) **Accused where held abetted the commission of suicide by a married woman** - in the under-noted case Veena Rani's death on account of burn injuries took place on 15th September, 1975 after about two years of marriage. Deceased was employed in the State Bank of Patiala and at the time of death the couple were residing in Sangrur where the husband of the deceased was practicing as a lawyer. The married life was unhappy and demand for bringing more money from parents was made to deceased by her husband. It was alleged by the prosecution, that the deceased was being ill treated and also physically assaulted by the accused husband. On account of ill treatment the deceased went on leave without pay and went to reside at the house of her father in Patiala. Case under Section 9 of Hindu Marriage Act was filed and after compromise the deceased came back and resided with her husband, the
accused. Subsequently the accused purchased a Scooter and thereafter again the ill treatment started and demand of money towards cost of Scooter was made to deceased. The Supreme Court holding the accused guilty of the offence observed:-

"There is overwhelming evidence in the case to establish that Veena Rant's life was made intolerable by the accused by constantly demanding from her money and also beating her frequently."

The crucial question for consideration is whether Veena Rani put an end to her life of her own will and volition or whether her committing suicide had been abetted in any manner by the accused. To determine this question, the plight of Veena Rani during the few days proceeding her death and the events which had taken place on the morning of 15th September, 1975 itself has to be looked into. So should have been the demand of accused for money that on the morning of 15th September, 1975 even at about 6.30 or 7. a.m. the accused and Veena Rani had to go to the house of P.W. 9 Shri Hart Om to seek a solution. Even in front of P.W. 9 Shri Hari Om, the accused had insisted that Veena Rant should get him a sum of Rs. 1,000/- forthwith. When Veena Rani pleaded inability to make immediate payment, the accused told her that he did not care even if she went to hell but he wanted immediate payment. When Veena Rani stated in despair that she had enough of torment and that she preferred death to living, the accused added fuel to fire by saying that she may put an end to her life the very same day and she need not wait till the next day to quit this world. Such an utterance by the accused would have certainly been seen by Veena Rant as an instigation to her to commit suicide. Otherwise, she would not have set fire to herself within a short time after she reached home. One significant factor to be noticed is that but for being spurred to action, Veena Rant would not have easily reconciled herself to forsaking her one and a half year old son and commit suicide. No mother, however distressed and frustrated, would easily make up her mind to leave her young child in the lurch and commit suicide unless she had been goaded to do so by someone close to her. Yet another factor to be borne in mind is that there is no evidence as to what transpired between the
accused and Veena Rant after they had left the house of P.W. 9 Shri Han Om. The only two persons who could speak about it are the accused and Veena Rant and since she is dead it is only the accused who can throw some light on the matter. Strangely enough the accused has not said anything about it in his statement under Section 313, Cr.P.C. He has not said a word that he had assuaged the wounded feelings of Veena Rani before he left for Court. His silence on this aspect of the matter would, therefore, mean that he had not changed his stand subsequently. As to what would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore, in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distressed condition to which the accused had driven Veena Rani. Fully well knowing her helpless state and frustration, if the accused had told her that he set greater store on the sum of Rs. 1,000 required by him than her life and that she can die the very same day and afford him early relief, it is not surprising that Veena Rani committed suicide a little later on account of the accused’s instigation. In the present case, however, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and would, therefore, fall under the first clause of Section 306, I.P.C. 29

The charge in this case was specific that the reason for suicide by Bimla Bai, wife of the accused, was that the accused stopped her from taking the crop, asked her to go away from the house, threatened to kill her, used force to obtain divorce from her and threatened to kill if she did not agree to divorce, took poison and ended her life and thus the accused provoked her to commit suicide. Asking for divorce by itself cannot be called a provocation for suicide, even if the wife actually committed suicide as a result of such asking. But it is the cruelty and over all atmosphere created by cruelties precedent and antecedent of such demands of divorce which are material and which had an effect of leading this lady to take poison. The facts and circumstances of the
present case lead to the only conclusion that due to cruel conduct of the accused, Bimla Bai was provoked to commit suicide. So the appellant abetted suicide by cruelty. He has been rightly convicted for the offence under Section 306, I.P.C. His conviction was affirmed. 30

In the instant case deceased was married in November, 1982 and on 25th June, 1985 she committed suicide by sprinkling kerosene oil over herself and then setting herself on fire. The prosecution led evidence in the case about ill-treatment to deceased on account of dowry demand. The trial Court convicted the accused persons under Section 306, I.P.C. which was set aside in appeal by the High Court. The father of the deceased preferred appeal against acquittal to Supreme Court. The Supreme Court after going through the evidence observed;

The Trial Court rightly held “that the intending circumstances show that she was not allowed to move till the process of burning had become irrecoverable and till she succumbed to her injuries. It was not a case of accidental fire but a case of suicide committed by the deceased Ravinder Kaur being constantly abused, taunted for bringing less dowry and also being defamed for carrying an illegitimate child. The only reasonable view that can be taken in the case is that the cruel behaviour and constant taunts and harassment caused by the accused persons while Ravinder Kaur, deceased was in her in-laws house instigate her to commit suicide. 31

(g) Accused where held not abetted the suicide of a married woman -
In Wazir Chand v. State of Haryana, 32 the prosecution story was that the deceased Veena was married to Kanwar Singh son of Wazir Chand on 16th October, 1983 and she died of burn injuries within less than a year of the marriage. The husband and the in-laws of the deceased were no satisfied with the dowry given at the time of the marriage and were making demand for further Articles of dowry from deceased and her relatives were harassing, humiliating and Insulting the deceased as a result of which she was driven to commit suicide in the kitchen of the house. The attention on the neighbours from cry of the deceased was prevented by raising the volume of the radio or T.V. set and also
by shutting the door of the house from inside. The deceased was subsequently
not taken to the civil hospital where facility for treatment for burn Injuries was
available but to the Nursing Home where facility for such treatment was not
available. The defense of the accused was that the clothes of the deceased
caught fire while he was preparing tea and no demand of dowry was ever made.
The trial Court acquitted the mother-in-law but convicted the husband and the
father-in-law under Section 306 and 498-A. I.P.C. The appeal was dismissed
by the High Court but sentence was reduced. Before the Supreme Court the
validity of conviction under both the Sees. 306 and 498-A was challenged.
Dealing about the validity of conviction under Section 306, I.P.C. the Supreme
Court after going through the evidence led in the case observed that there are
discrepancies in the prosecution evidence (1) about the place where the stove
was found. (2) about the smell of kerosene from clothes of deceased and no
question in this regard was put to the lady doctor who first treated the burn
injuries (3) about not taking the deceased to Civil Hospital and preventing her
from being heard by the neighbours. It is not possible to come to a conclusion
with the degree of certainty required In a criminal trial that there was any
deliberate delay in taking Veena to the hospital. As far as the question of not
taking Veena to the Civil Hospital is concerned it is again difficult to base any
conclusion on this circumstance, It is truth that better treatment would, in all
probability, have been available at thr Civil Hospital. The evidence, however,
shows that Wazir Chand first went to Dr. Garg and thereafter took Veena to
Geeta Nursing Home and he Was there by 7.45 a.m. to 8.00 a.m. The evidence
on record also shows that Nursing Home was in the same Sector of Faridabad,
namely. Sector No. I so that it was easier to take Veena to that Nursing Home.
In these circumstances, it is difficult to come to a conclusion that Wazir Chan
deliberately avoided taking Veena to the Civil Hospital. As far as th question of
suppressing the sounds of cries of Veena is concerned, it is again not possible
to draw any inference from this circumstance as It has not been put to either
Wazir Chand or Kanwar Singh with the Inference sought to be drawn when their
statements were recorded under Section 313 of the Criminal Procedure Code.
It is, therefore, not permissible to place any reliance on this circumstance in
convicting them. The result, therefore, is that there is no satisfactory evidence on the basis of which a conclusion could be reached with any reasonable certainty that Veena committed suicide and the conviction of Wazir Chand and Kanwar Singh under Section 306 of the Indian Penal Code must be set aside. Holding the accused person guilty under Section 498-A I.P.C., the Supreme Court observed, there is ample evidence that repeated demands were made inter cilia by Wazir Chand and Kanwar Singh on Veena, her parents and her brother Krishan Kumar for Articles of dowry and money. There is also evidence that Veena made statements after her marriage and right up to the time when she died that she and her parents were being harassed by Wazir Chand, Kanwar Singh and his family members for various dowry Articles and also for money. In fact, what the most telling circumstance is that after the death of Veena a large number of dowry Articles seems to have been taken back by Veena’s family members from Wazir Chand’s residence which were admittedly being given as dowry. There is also substantial evidence to show that an amount of Rs. 20,000 to 25,000 was demanded from Krishan Kumar, the brother of Veena and her mother by Wazir Chand for setting up Kanwar Singh in business and they were unable to satisfy these demands. Therefore, the Supreme Court agreed with the conclusion reached by the Trial Court and confirmed by the High Court and confirmed the conviction and sentence imposed on both the accused under Section 498-A. I.P.C. 33

Where the husband of deceased slapped her in the house of a third person and deceased committed suicide after 3-4 days, the presumption under Section 113-A of the Evidence Act is not available to the Court. So it cannot be said that deceased committed suicide merely because of this conduct of the husband in treating her with cruelty. 34

Nothing has been pointed out on behalf of the respondent to show that the appellant’s act of not making any endeavour to save life of the deceased is against law or the appellant was under an obligation by law to prevent such incident. Individuals act differently in same situation, it may be possible that the appellant seeing the flames got so shocked that he did not re-act or he might
not have attempted to put off the fire apprehending danger of his life. The act of
the appellant does not come within the expression 'illegal omission' and
accordingly he cannot be held guilty for abetment of the offence. As such the
conviction and sentence of the appellant cannot be sustained.\textsuperscript{35}

In a charge of suicide by abetment the first thing that is necessary for
proving the offence is the fact of suicide. Abetment is a separate and distinct
offence provided the thing abetted is an offence. Abetment does not involve the
actual commission of the crime abetted; it is a crime apart as observed in
Barendra Kurnar Ghose v King Emperor.\textsuperscript{36} No doubt deceased Pawna was
residing in her in-laws house just prior to the commission of the offence but
what led her to take this extreme step, there is neither any direct evidence to
this effect nor that of the act of suicide by deceased. The entire facts indicate
that both the accused had cordial relations with the deceased prior to her death.
The dead body of deceased was found in the bowli and consequently was taken
out in the presence of her parents, Munshi Ram (P.W. 5) her paternal uncle and
that of Pradhan Mansha Ram (P.W. 4) by the Investigating Officer. The inquest
report Exts. PB I and PB II was prepared in their presence and none of them
came out with the story of cruel behaviour; mal-treatment and harassment caused
by either of the accused person to the deceased person at that time. Even the
dead body was handed over to the accused person who had cremated her. It
was only after the statement of Chin Devi (P.W. 1) the mother of the deceased
was recorded by the Investigating Officer on 25th June, 1982. that the instant
criminal case was registered and which led to the prosecution of the accused.
Initially, the parents of the deceased did not suspect any foul play nor they
reported their (accused) complicity in the commission of the offence in question.
The conduct of the accused on the death of deceased falls to show any
semblance of their guilt. Rather it points towards their innocence. If the parents
of the deceased has suspected any foul play they could have immediately pointed
out it against the accused at the time of the inquest was prepared or the matter
could be disclosed immediately thereafter to the investigating Officer who had
visited the spot. The statement of Chin Devi P.W. 1 regarding maltreatment and
harassment of the deceased tantamount to simply a general statement. Even the statement of other P.Ws is of similar type. There is some cloud created on the testimony of all these witnesses as Smt. Ghugl (P.W.9) has deposed that a few days prior to the death of deceased both the accused had gone to attend the marriage at village Beeri. This fact is also admitted by the Investigating Officer in his testimony although he has not specified the dates nor had taken the trouble to find out the period spent by both, the accused as also the deceased in that marriage. However, assuming the incident of 6th June, 1982 regarding the complaint of maltreatment meted out to deceased at the hands of the accused person, none of the prosecution witnesses had stated a word that deceased or her father Pratap Singh had ever complained that accused were interested that deceased should end her life or they were instigating her to commit suicide. The only circumstances brought out by the prosecution against the accused is some sort of maltreatment meted out to the deceased which in legal parlance does not amount to abetment as contemplated under Section 107 of the Indian Penal Code. Criminal charges must be brought home and proved beyond all reasonable doubt. There must not be any 'reasonable doubt' about the guilt of the accused in respect of the particular offence charged. The Courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting off some guilty persons. There is a higher standard of proof in criminal cases than in the civil cases, but there is no absolute standard of proof in either of the cases. The Trial Court rightly held that the prosecution has miserably failed in proving the guilt against the both the accused. 37

Having acquitted the appellant/accused of the charge under Section 302 of I.P.C. which was the only charge framed against him, the Sessions Judge could not have convicted him of the offence under Section 306 read with Section 498-A of I.P.C. It is true that Section 306 read with Section 498-A of I.P.C. entitles a Court to convict a person of an offence which is minor in comparison to the one who for which he is tried for the offence under Section 302 of I.P.C. but Section 306 read with Section 498-A of I.P.C. cannot be said to be minor offence
in relation to the offence under Section 302 of I.P.C. within the meaning of Section 306 read with Section 498-A of I.P.C. The reason is that these two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 of I.P.C. is homicidal death, those of Section 306 read with Section 498-A of I.P.C. are suicidal death and abetment thereof.38

(h) Abetment to suicide In other cases where held not proved - In the Instant case the contention of the prosecution that the accused were partners of the deceased and they had abetted the commission of the offence held not proved.39

(i) Sati - The deceased having lost her husband, resolved to Immolate herself and thus become a suttee. She prepared herself for it In the presence of the accused. They followed her to the pyre and stood by her. Her step-son crying "Ram !" One of the accused told her to repeat "Ram, Ram !" and She would become suttee. These facts were held to prove active connivance and unequivocal countenance on their part, justifying the Inference that they had engaged with her in a conspiracy for the commission of the suicide by suttee. They were consequently convicted of the offence.40 in another case the facts constituting abetment were more conspicuous. The deceased wanted to become suttee, and proceeded to the pyre. The three accused ordered a boy to light It, while another induced the deceased to return to it, after she had retired from It, and she was immolated. The three accused were convicted of abetting culpable homicide, and the boy and other persons of abetting suicide.41 It is submitted that the three accused should also have been convicted of the same offence for homicide by person of herself is suicide, and only Its abetment Is punishable here. In another case the accused had reported to the police the intention of a widow to become a suttee; but before the police could arrive, the widow ordered the accused to remove her husband's body which they did. At the burning ghat she ordered them to build a funeral pyre which they did, and two of them in obedience to her request handed her a pot full of clarified butter which she poured over the pyre and her own person. The pyre was then fired but It was not proved by whom. All the five accused were held to have abetted
the sati and they were all convicted under this Section.42 Where the method of destruction resolved upon for the suicide Is fire, the method of Ignition of the fire, whether miraculous, whether self-applied or whether applied by others is totally Immaterial.43 A sentence of six months' rigorous imprisonment for such a barbarous act of abetment of sail is ludicrous. It is essential that people should respect the law which is also right and has been In force for over a hundred years. In cases of sati which off and on take place, a deterrent sentence is called for. In this case the High Court enhanced the sentences of the accused to rigorous Imprisonment for five years.44

(j) Suicide within seven years of marriage - In the under-noted case, however, there are certain other circumstances which rule out the possibility of suicide. If the deceased Santosh Rant was committing suicide, she as a mother, would be last person not to save her daughter of tender age. The fact that the child also received bums and died would positively' go to show that both of them were burnt to death at the hands of some others who can be none else than the two accused. This Is a very telling circumstances and It. completely rules out the theory of suicide. The trial Court rejected the dying declaration recorded by P.W.3 on the grmind that It was result of tutoring. From the records it is clear that the father P.W.4 was not with the deceased when she was taken to the Hospital Only P.Ws. 5 and 6 the relatives took her there. There is the evidence of P.W.3 the Doctor that as soon as he admitted her and started treatment nobody was allowed inside and none was present thereafter with her and it was during that period the dying declaration was recorded, The evidence of P.W.3 totally rules out any possibility of alleged torting. Even otherwise from the mere presence of the relative who must have been anxious about the condition of the Injured? It does not automatically follow that they would be Interested in falsely implicating the accused and tutor the deceased and prevail upon her to make such a statement. In addition to that it is also necessary to bear in mind that the sanctity attached to the dying declaration Is that a person on the verge of death would not commit the sin of Implicating somebody falsely. Be that as It may after giving anxious considerations, the Supreme Court was
satisfied that the dying declaration duly recorded by P.W. 3 and attested by two other doctors, Is clear and fully Implicates the two accused. Having subjected the dying declaration to a close scrutiny It does not suffer from any Infirmitiy whatsoever and further it Is corroborated by other circumstances particularly by the evidence of P.Ws. 5 and 6. Therefore, there is no ground to disagree with the findings of the High Court. The High Court has rightly set aside the order of acquittal as there is only one view possible namely that the accused and accused alone caused the death of the two deceased. 45

In an other case the letters strongly indicate that Saswati earned a respectable status in the family and she was happy there. She had no grievance against Dipankar who helped her and encouraged her in prosecuting her studies when she was unsuccessful in the B.A. Examination. However, she might have lost peace of mind and was suffering from some complex which she could not get rid of. In the diary which is in the nature of an autobiography, she asked herself "Am I turning to be a Freud's saddist?". She had started a short story which she did not complete. In her dying declaration she describes herself as "Sentimental". Her father stated that his daughter was arrogant to some extent. Saswati was 26 years old having an independent income of her own. If in fact she was tortured by her husband physically and mentally she was free to leave her matrimonial home. This she did not. The close neighbours Nirode P.W.3 and Hart Sadhan. P.W.4 have testified that the conjugal relation between Dipankar and Saswati was good. Nirode has also stated that after the suicide Saswati repented for her acts. The witnesses were not declared hostile at the instance of prosecution. In this context, the possibility of Saswati committing suicide by sudden impulse cannot be ruled out altogether. The conduct of the appellant is also inconsistent with the guilty mind. The learned Trial Judge failed to appreciate these aspects properly and thus he came to an erroneous conclusion and convicted and sentenced the appellant, which for reasons stated above, must not be sustained. 46

(k) Presumption under Section 113-A. Evidence Act for abetment to suicide when can be made - The Court in having recourse to the presumption
under Section 113-A of the Evidence Act must be circumspect. The legislative mandate of that Section is that where a woman commits suicide within seven years of marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as the term has been defined in Sec. 498-A, I.P.C. the Court may presume, having regard to all the other circumstances of the case that such suicide had been abetted by such person. It is evident that the Legislature was extremely careful in drafting the provisions of Section 113-A of the Evidence Act. Had it been the intention of the Legislature that the Court should in all cases jump upon a conclusion as a rule that there has been abetment of suicide simply because suicide has been committed by the woman within seven years of marriage and she was subjected to cruelty, the Legislature would not have used such flexible expression as the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband. The expression used is 'may presume' and not that rigid as 'shall presume'. In view of Section 4 of the Evidence Act the Import of the expression 'may presume' is that the Court may either regard the fact in question as proved, unless and until it is disproved, or may call for proof of it. In Section 113-A of the Evidence Act, the Legislature in its wisdom did not leave it at that by using the expression "may presume" along, but has supplemented the same by using the further expression "having regard to all the other circumstances of the case" which casts a positive responsibility on the Court to take into consideration all the other circumstances of the case also, namely the circumstances which may be there besides the two basic circumstances mentioned in the Section itself which are suicide within seven years of marriage and proof of cruelty. in deciding whether the presumption of abetment of suicide should be drawn in a particular case from the proof of cruelty which itself is separately punishable under Section 498, I.P.C. In the present case, the outstanding demand of dowry from the evidence of P.Ws 8, 9 and 10 were a radio, a bell-metal glass and a sum of Rs. 100/- and this demand was met in lob in presence of those witnesses about 1½ month before the occurrence. "It was also got from those witnesses that the dispute and the trouble over the outstanding demand of dowry were settled thus. That being so, this is a
circumstance which also must be taken into consideration in deciding whether the presumption of Section 113-A of the Evidence Act should be drawn in this case.

If in any particular set of facts and circumstances, previous ill-treatment or cruelty loses the potentiality of a probable cause of suicide by dint of proximity test, the same should not ordinarily be invoked to raise presumption of abetment of suicide. Proximity test also serves as a legitimacy test in determining whether it would be legitimate in the particular facts and circumstances of a case to draw a presumption of abetment of suicide under Section 113-A of the Evidence Act by reason of bygone-cruelty. The importance of proximity test in the matters of presumption can also be appreciated by referring to the provisions of Section 113-B of the Evidence Act which runs thus:

"When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry the Court shall presume that such person had caused the dowry death."

**Explanation** - For the purposes of this Section dowry death shall have the same meaning as in Section 304-B of the Indian Penal Code."

There is no reason to suppose that Section 113-B, the language of which is rather all-embracing excludes proximity test even when such test is projected by the facts and circumstances of the case. In deciding whether the permissive presumption or the presumption of fact as envisaged in Section 113-A of the Evidence Act should be invoked in any particular case the Court will have to be circumspect and will have to consider all the attending facts and circumstances of the case. In order to attract presumption of abetment of suicide under Section 113-A the facts and circumstances should be such as can reasonably sustain a presumption about the existence of a nexus of cause and effect between the alleged cruelty, and suicide. Where the probability of existence of that nexus suffers set back due to pronounced withdrawal of the causal syndrome, it will be unsafe and, therefore, unjust to yet invoke a presumption of guilt against the
accused under the said Section. There, however, cannot be any cut-and-dried formulae as to where the presumption under Section 113-A of the Evidence Act should or should not be drawn and it all depends upon the totality of the facts and circumstances of each case.47

The contention that demand of dowry is not backed-up by any documentary evidence cannot be accepted. It is common knowledge that people who made demands are not indiscreet enough to make them in writing, obviously because they do not want to create any documentary evidence against themselves.48

(I) Presumption under Section 113-A of the Evidence Act where held rightly taken - There must not be any 'reasonable doubt' on the guilt of the accused in respect of the particular offence charged. The Courts must strictly be satisfied about that no innocent person in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting of some guilty persons. Even after the introduction of Section 498-A of the Indian Penal Code and Section 113-A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt.49

(iii) Section 309 : Attempt to commit suicide under Indian Penal Code

Whoever attempts to commit suicide and does any act towards the commission of such offence, be punished with simple imprisonment for a term which may extend to one year,[50] [or with fine, or with both].

(a) Analogous law - The words "or with fine or with both" were substituted for the words, "and shall also be liable to fine" by the Amendment Act of 1882.51 This Amendment has had the effect of overruling the Bombay case in which the sentence of imprisonment was held to be compulsory.52 This Section punishing an attempt to commit suicide. This definition of an attempt, as here given, is the same as forms part of Section 511, and is a paraphrase of the English phrase "manifest overt act". As has already been mentioned, Sir James Stephen defined an attempt to commit a crime as an act done with intent to commit that
crime and forming part of a series of acts which would constitute its actual commission, if it were not interrupted.\textsuperscript{53}

It has already been seen how, with the advent of the modem conception of human life, the posthumous penalties, atone time visited upon the corpse 'of the suicide and his family, have now all been abrogated by statutes. The only relic of the past being an abbreviated burial service which the statute has not touched, to provide against which it is customary with the Coroner's Jury to still couple insanity as the cause of suicide in their verdict. The Coroner's Rules, 1953, now suggest the wording 'whilst the balance of his mind was disturbed.'\textsuperscript{54}

(b) **Principle- Attempt to commit suicide is punishable** - The law esteems the lives of men as not only valuable to their own possessors, but as also valuable to the State which protects them and for the protection and amelioration of which the State exists. It, therefore, rightly claims to prevent persons from taking their own lives, as much as it prevents them from taking the lives of others. This right has been claimed by the State at all times, though the nature of its interference has, from time to time, varied. At the present time, it is a recognised doctrine of criminal jurisprudence that, though the State should impose posthumous disabilities in case of suicide, it should certainly punish those who attempt to commit it. It may be said that the policy of punishing an attempt where the completed act goes unpunished, might encourage those who make the attempt to make it successful. But this has not been the experience of jurists who have found the provisions as existing both salutary and deterrent.

(c) ** Meaning of words** - "Does any act towards the commission of such offence": "Such offence" refers to suicide, but suicide is not an offence under the Code or under any special or local law. The language of the Section is inapt. To be more correct, it should run thus: "Whoever attempts to commit, and does any act towards the commission of suicide, etc." For the meaning of "attempt".

(d) **Attempted suicide** - Suicide, as such, is no crime under the Code. Its attempt alone is punishable under this Section. The fact that an attempt to commit suicide is made criminal shows that in the eye of the law suicide is not
necessarily the outcome of deranged Intellect, but it may be a crime committed by a person in his sober senses. And this is the view of medical men and of many psychologists. There can be no doubt but that persons are often driven to commit suicide owing to poverty or distress, loss of honour and fortune; while others are driven to self-effacement under the impulse of religion, as witness the case of suttee and of those who starve or torture themselves to death to attain nirvan or a Supreme beatitude by absorption in the Divine essence.

In early times the stoic philosophers and the Hindus thought that life is an evil which imprisons the soul which could not therefore attain its ideal namely freedom from birth and death therefore they encouraged its destruction. It was, therefore tolerated by the evil law, but later on Hindu Shastra's ordained posthumous punishment for suicide, namely no ceremonies were to be performed for him and no pandit could go to perform his cremation. With the advent of Christianity, it began to be treated as a twofold offence.

First, spiritual, i.e. against the' Almighty, because, a suicider wanted to go to him uncalled for.

Secondly, temporal, i.e. against the king, who has an interest on the preservation of the lives of all its subjects. But now 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 of the Constitution.

Every man lives to accomplish four objectives in life: (1) Dharma (religion and moral values); (2) Artha (wealth); (3) karma (love or desire); (4) Moksha (spiritual enjoyment). When the earthy objectives are complete, religion would require person not to clinch to the body. Shri Tripathi statad that a man has moral right, to terminate his life, because death is simply changing the old body into a new one by the process known as kayakalp, a theory for rejuvenation.

Mythology says Lord Rama, and his brothers took Jalasamadhi in river Saryu near Ayodhya, ancient history says Buddha and Mahavir achieved death by seeking it, Modern history of Independence says about various fast undo
death undertaken by no less a person than Father of the Nation, whose spiritual
disciple Vinoba Bhave met his end only recently by going on fast which act (of
suicide) even as strong as Prime Minister as Indira Gandhi could not dissuade
the Acharya. The aforesaid person where our religious and spiritual leader, they
are eulogized and worshipped. Even the allegation against them that they
indulged in a not religious act, would be taken as an act sacrilege. So in our
county there is no non religiosity to the act of suicide so far as our social ethos
is concerned so it is this ethos, this social mores, which our law has to reflect
and respect.

But contrary to our religious history the basis of punishment of attempt
suicide is that the life of man is valuable not only to the possessor but also the
state and, therefore, an attempt to suicide is made punishable. A number of
cases of suicide have been discussed below which will help us to understand
the present Law of suicide in Indian Penal Code and the act done must be in
the course of attempt, otherwise no offence is committed. Where a woman with
the intention of the committing suicide by throwing herself in well, actually ran
toward it, when she was seized by a person, it was held that she might have
changed his mind, and she was caught before she did anything which might
have been regarded as the commencement of the offence. Her act simply
amounted to preparation.\textsuperscript{56}

In Emperor v. Dawarka Poonja\textsuperscript{57} case where the accused jumped into
a well to avoid and escape from police, and when rescued he came out of the
well of his own accord, it was held that, in the absence of evidence that he
jumped into the well to commit suicide he could not be convicted of this offence
of attempted suicide.

In Emperor v. Dhirajia\textsuperscript{58} case a woman of twenty was illtreated by her
husband. There was a quarrel between the two, and the husband threatened
that he would beat her late that night the woman taking her sin mouths old baby
in her arms, slipped away from the house. After she had gone some distance
she heard somebody coming up behind her, and when she turned a round and
saw her husband pursuing her, she got into a panic and jumped down a well
near by with the baby in her arms. The result was that the baby dead but woman recovered. One of the charges against her was attempt to commit suicide. It was held that she should not be convicted under this Section of an attempt to commit suicide, for the word "attempt" cannot some conscious endeavor to accomplish the act, and the accused in jumping down the well not thinking at all of taking her own life but only of escaping from her husband.

The attempted suicide is debatable as it is a sphere in which the sanctions of the criminal law are not likely to be effective. Therefore, the Courts have recognized that a lenient sentence may be appropriate in cases of attempted suicide.

When the decision is to die and the same is implemented to its fructification resulting in death, that the end of the matter. The dead is relieved of the agony, pain and suffering and no evil consequences known to our law follow. But if the person concerned be unfortunate to survive, the attempt to commit suicide may see him behind the bar, as the same is punishable under Indian Penal Code.

(e) **What is an attempt to commit suicide?** - So far, then, the question presents no difficulty. But when the question of attempt is considered, two questions naturally arise: what is an attempt, and when does the preparation end and an attempt begin? A person who feels moody and melancholy and threatens to commit suicide may have that intention, but he cannot be convicted of an attempt. An attempt implies at least an act towards the commission of suicide, such as drowning or poisoning or shooting oneself. If a person throws himself into a well with a view to drowning himself, and if rescued, he is guilty of such an attempt as is punishable under this Section. But if he runs to a well with a view to drown himself, butts rescued before he throws himself into it, he could not be convicted of an attempt; for his act was a mere preparation to commit an act, and before committing which he might have changed his mind. So the pounding of oleander roots with an intention to poison oneself with the same, does not constitute an attempt to commit suicide. In the instant case, a woman who was in an advanced stage of pregnancy and had been driven almost
frantic by the pains of prolonged labour attempted to take her own life by throwing herself down a well. She was actually delivered of a child while in the well. The unfortunate infant was born dead. Held that she has been rightly convicted of an offence under Section 309, I.P.C., and that she had not committed the offence of attempting to cause herself to miscarry.\textsuperscript{62}

Every hunger-striker will not incur the penalty under this Section. When a person goes on hunger strike a stage may be reached at which death is certain unless prompt action is taken to prevent it by administering nourishment to that sinking person. If at such a critical stage the person still refuses nourishment it could be said that there is an attempt to commit suicide. Mere refusal to take food even for a short period would not amount to any conscious effort to put an end to one's life. It would merely be the stage of preparation after the stage of intention. Where the accused, a bidi-worker on hunger-strike, readily of her own accord accepted nourishment in jail, there was no attempt to commit suicide within the meaning of the Section.\textsuperscript{63}

In Ram Sunder Dubey v. State,\textsuperscript{64} where the accused went on hunger-strike in order to get his demands fulfilled by his employers, the question before the Court was whether any offence under Section 309, I.P.C., was made out. To answer this question the Court observed that the peculiar difficulty about suicide by starvation is that it is a long drawn-out process, which can be interrupted or given up at any stage (except perhaps the very last). Unless there is some overt declaration by the accused of his intention to fast to death, it is difficult to be sure that he really intended to preserve to the bitter end. And even if there is such an Intention at the beginning, one has always to make allowance for the possibility of the accused changing his mind and breaking his fast before it becomes dangerous. It may be remembered that if a person openly declares that he will fast to death and then proceeds to refuse all nourishment until the stage is reached when there is imminent danger of death ensuing, he can be held guilty of the offence of attempted suicide. But where the evidence falls short of this it can scarcely be said to be sufficient to substantiate the charge.
(f) **Attempt must be intention** - The essence of suicide is an intention self-destruction of life. If, therefore, a person takes an overdose of poison by mistake, or in a state of intoxication, or in order to evade his arrest by his pursuers. He could not be held accountable for his action. But, if there was an intention to commit suicide, and an attempt for that purpose was made, the accused could not escape responsibility for his action, except on the ground of insanity. This was decided in England in a case the decision of which does not appear to be in every respect satisfactory. The case arose out of a policy of life insurance which, by its terms, become void on the insured committing suicide. The deceased was proved to have been killed by taking sulphuric acid in a state of insanity, and the question was whether such death amounted to suicide. Cressel, J., held that suicide meant "a felonious killing", and that it did not extend to such a case as that of the accused. But unfortunately this decision was reversed on appeal and it was held that if a person killed himself intentionally, no matter whether he was at that time sane or insane, he had committed suicide. But how, it may be asked, can a person have intention when he is bereft of reason by reason of his insanity? There can be scarcely any doubt that, if such a question arose again, the judgment of the Court could be different. But, whatever may be the view in England, it is abundantly clear that such a case could not be similarly decided in this country.

A young woman of 20 years, having a baby of six months was not on good terms with her husband who did not treat her very well. On the day of occurrence there had been a quarrel between the husband and wife when the husband had uttered threats against his wife that he would beat her. Late that night the husband woke up and found his wife and the baby missing. He went out in pursuit of them and when he reached a point close to the railway line he saw her making her way along the path. When she heard him coming after her, she turned round in a panic, ran a little distance with the baby girl in her arms and then jumped into an open well which was at some little distance from the path. She did this in panic. The little child died while the woman was eventually rescued and suffered little or no injury. She was charged with the murder of her
baby and with an attempt to commit suicide herself. It was held that it is impossible to say that the accused had no excuse in jumping into the well. She feared her husband and she had reason to fear her husband. She was end'avour1ng to escape from him at dawn and in the panic into which she was thrown when she saw him behind her she jumped into the well. Thus she had excuse and that that excuse was panic or fright or whatever it may be called. For these reasons, she is not guilty of murder. As regards the charge of attempted suicide, it was observed that the word "attempts" connotes some conscious endeavour to do the act: which Is the subject of the particular Section. When the accused jumped into the well, she did not do so in a conscious effort to take her own life. She did so in an effort to escape from her husband. The taking of her own life was not for one moment present to her mind.67

The accused jumped into a well to avoid and escape from the police. He came out of the well of his own accord. He was convicted of this offence but his conviction was quashed by the High Court on the ground that he had no Intention to commit suicide.68

Suicide, of course, implies total deprivation of life. Mutilation of one's person is not suicide. So a person could not be convicted of this offence for emasculating himself.69

(g) Validity of Section 309, Indian Penal Code - The High Courts of Delhi, Bombay, and Andhra Pradesh were confronted with the problem of validity of Section 309 of the Indian Penal Code, which make attempt to commit suicide an offence punishable with simple imprisonment for a term which may extend to one year or with fine, or with, both The Delhi High Court70 took the stand that there was no justification for the continuation of Section 309 of the Indian Penal Code because it was 'an anachronism unworthy of human society like ours' Justice Sachar (as he then was), speaking for the Court pointed out:

"It is ironic that Section 309 I.P.C. still continues to be on 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 sham that there
should be such social strains that a young man 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. Medical clinic for such social misfits certainly but police and prison never. The very idea is revolting Need is for humane civilised and socially oriented outlook and penology"

On the other hand the Bombay High Court took the stand that the said Section was ultra vires being violative of Article 14 and 21, and was, therefore, struck down But it was strange that the Andhra Pradesh High Court held that Section 309 was valid and it did not offend Artcles 14 and 21.

In the Bombay High Court, Sawant, J., (as he then was) speaking for the Division Bench dwelt at length on the Constitutionality of Section 309 The Court declared the Section unConstitutional on the following grounds :

"Firstly, Article 21 also included the negative right not to live. Secondly, suicide is generally committed for reasons, inter alia, mental 'diseases and imbalances, unbearable physical ailments, affliction by social condition disabling the person from performing normal functions, the loss of all senses or of the desire for the pleasures of any of the senses or a need to defend ones honour. And, lastly, the Bombay High Court also took into cognizance the existing customs in India of johars, still, samadhi, prayopaveshan, atrnarpaia (self sacrifice)." The Division Bench of the Bombay High Court held that fundamental right have both positive as well as negative aspect and therefore, stated logically, it must follow that right to live will include right not to live i.e., the right to die or to terminate one's own life. The Division Bench of the Bombay High Court held that Section 309, I.P.C. is violative of Articles 14 and 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.'

Then the Division Bench of the Andhra Pradesh High Court in Chenna Jagadeeswar v. State of Andhra Pradesh, rejected the challenge to the
Constitutional validity of Section 309, I.P.C., The argument that Article 21 includes the 'right to die' was rejected. The High Court observed 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. The High Court also observed that 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 one-self and to take it 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.

In Chenna Jagadeeshwar v. State of Andhra Pradesh the Constitutional validity of Section 309, I.P.C. was challenged. Holding that Section 309, I.P.C. is not violative of Arts. 19 and 21 of the Constitution, their Lordships observed:

"Articles 19 (1) and 21 of the Constitution read as under:

"Article 19. (1) All citizens shall have the right:

(a) to freedom of speech and expression:

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India. and

(g) to practice any profession or to carry on any occupation, trade or business".

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

From these Articles, it is seen that 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, no Constitution can ignore the right of the
citizens to life though it may not be 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 thefts are committed due to the 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, I.P.C. is 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, I.P.C. may not lead to a punishment. Section 309 I.P.C., 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 provide 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 a 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 women-fold who constitutes 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 barbarous and inhuman pressures.

If Section 309 is held to be illegal, we are highly doubtful whether Section 306, I.P.C., 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 of 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 it 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. It is, therefore, held that Section 309. IPC is valid and does not offend Arts. 19 and 21 of the Constitution."

The Supreme Court in the case of P. Rathiram Nagbhusan Patnaik v. Union of India observed that Section 309 of the Indian Penal Code deserves to be effect from the statute book to humanise 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 concerned persons is not called for Section 309 violates Article 21, and so, it is void. May it be said that the view taken would advance not only the cause of humanisation, which is a need of the day, but of globalisation also, as by effacing Sec 309, on would be attuning this part of our criminal law to the global wavelength.

In R. v. Appulsawany case it was held that server sentence should not be passed in cases of attempt to commit suicide, where the accused suffer from a bodily affliction which is likely to cause him acute mental depression.

In the case of Massammat Barkat v. Emperor, it was held that it is not necessary to inject sentence of imprisonment upon a person, who, on account of family discord, destitution, loss of a dear relative or other cause of like nature, overcomes the instinct of self-preservation and decide to take his life. In such a
case, the unfortunate person deserve indulgence, and should be either released on probation of good conduct or sentenced to a fine if he is not too poor to pay the fine. These observations apply with greater force to the case of a woman who attempt to commit suicide in similar circumstances.

In case of Emperor v. Mt. Mattia, a woman about 30 years ago attempted to take her own life by thoroughly herself down a well. The unfortunate woman was at that moment in the advanced stage of pregnancy. The excuse she put forward for her rash and criminal act was that she had been drawn almost frantic by the pains of prolonged labour. She was delivered of the child while in the well and the instant born was dead. on this stage of facts the learned Session Judge has argued himself into a conviction that Mt. Mullia committed a further offence namely that of attempting to cause herself to miscarry and he convicted her under Section 312 read with Section 511 Indian Penal Code. Mt. brought it under Section 312 by reason of the definition of the word "voluntarily" in the provision of the Penal Code. It is sufficiently obvious that so far as concerns the fact that the child was not born alive, there was no question of any attempt. The result of the woman throwing herself into the well was that the child was born dead. The Judge was satisfied that the idea of possible consequences to the child was simply not present at all in the act for which she had been convicted. The Judge set aside the conviction and sentence under Section 312 of the Indian Penal Code and her conviction under Section 309, the woman were sentenced to imprisonment for other motives.

In P. Rathinam Nagbhusan Patnaik v. Union of India Section 309 was struck down although it was for the first time in State v. Sanjay Kumar Bhatia the Delhi High Court was of the view that the offence of attempt to suicide should be abolished. The accused in that case was charged under Section 309 of the Indian Penal Code for attempt to commit suicide. He was alleged to have consumed poison on 5.10.1981 'Challan was put in on 4.6.1982'. It was held that no investigation was to be done excepting to find out what accused had consumed and hence there was no reason why the investigation should be allowed to continue beyond six months. The order of acquittal could not be
Delhi High Court on the rationale of Section 309, Sanchar, J., observed:

"A young man has already tried to commit suicide presumably because of over emotionalism. It is chronic that Section 309 IPC still continues to be in our Penal Code. The result is that a young boy driven to such frustration so as to take one's own life would have escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed. It is strange paradox that in the age of Valaries of euthanasia, suicide should be criminally punishable. Instead of the society hanging its head in shame that there should be much social strain 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 boy to psychiatric clinic it gleefully send him to mingle with criminals, as it trying its best to see that in future he does fall foul of the primitive sanctions of the Penal Code. The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours. Medical clinic for such social misfits certainly but police and prison 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 more symptoms this attempt can only result in failure. Need is for human, civilized and socially oriented outlook and penology. Marty penal offences are the off shoots of an unjust society and socially decadent outlook of love between youngpeople 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 IPC which has no justification right to continue to remain on the statue book.

In a case of Bombay High Court in Maruti Shripathi Dubal v. State of Maharashtra where the Court on being as approached for quashing a prosecution launched against the petitioner under Section 309 of the Penal Code on the ground of unConstitutionality of the Section took the view that the
Section was ultravires being violative of Articles 14 & 21 was therefore struck down.

Reasons given by Bombay High Court in Shripati’s case for striking down the Section as violative of Article 21 are:

(1) Article 21 states, “Protection of life and personal liberty. No person shall be deprived of his life of personal liberty except according to procedure to establish by Law.” Article 21 has conferred a positive right not to live which carries with the negative right not to live. In this connection it has been first stated that fundamental rights are to be read together, as held in R.C. Cooper v. Union of India,\textsuperscript{83} 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 right. It was then stated that is not, and cannot be, seriously disputed that fundamental rights have their positives as well as negatives aspects. For examples, freedom of speech and expression includes freedom not to speak. Similarly, about the freedom of business and occupation, it was stated that it includes freedom not to do business. So too, the freedom of association and move must includes freedom not to join any association or move anywhere. 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.

(2) Notice was then taken of the various causes which lead people to commit suicide. These being mental diseases and imbalances, unbearable physical ailments, affliction by socially dreaded diseases decrepit physical condition disabling the person from taking normal care of the body and performing the normal chores, the loss of all senses or of desire for the pleasure of any of the senses, extremely cruel or unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one’s honour or a sheer loss of interest in life or disenchantment with it, or a sense of fulfillment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment.

(3) The Bench therefore stated that in our country different forms of suicide are known. These being, Johars like (mass suicides or self immolation)
of ladies from the royal houses to avoid being dishonored by the enemies, Sati which is self immolation by the widow on the burning pyre of her deceased husband. Samadhi (termination of one's life by self restrained on breathing) Prayopaveshan (starving unto death), and Atmarpana (Self sacrifice). It was also observed that the saints and servant, social, political and religious leaders have immolated themselves in the past and do so. even today by one method or the other and society has not only disapproved of the practice but has eulogised and commemorated the practitioners.

The Bombay High Court held Section 309 violation of Article 14 also mainly because of two reason, first which act or acts in series of acts will constitutes attempt to suicide, where to draw a line, is not known, some of the 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. Second reason given was that Section 309 tralts all measure without referring to the circumstances in which attempt are made.

The first reason is not sound because whatever difference there may be as to what constitutes suicide, there is not doubt that suicide is intentional taking of one's life, of course, there still exists difference among suicide researchers as to what constitutes suicidal behaviour, for example whether narcotic addition, chronic alcoholism, heavy cigarette smoking, reckless driving, other risk taking behaviors are suicide or not. It may also be that different methods are adopted in committing suicide for example use of fire arms, poisoning especially by drugs, over doses, hanging, and inhalation of gas, capable of a broad definition. Further on a prosecution being launched it is always open to an accused to take the plea that his act did not constitute suicide whereupon the Court would decide this aspect also.

In so for as treating of attempts to commit suicide by the same measure is concerned, the same also cannot be regarded as violative of Article 14 as much as the nature, gravity and extent of attempt may be taken care of by tailoring the sentences appropriately. Section 309 has only provided the
maximum sentence which is upto one year. It provide for imposition of fine only as a punishment.

The Bombay High Court decision led by some thinker to express their own views. The broad points of their criticism were:

(1) Suicide is an act against religion
(2) It is immoral
(3) It produces adverse sociological effects
(4) It is against public policy
(5) It damages monopolistic power of the state, as state alone can take life, and
(6) It would encourage aiding and abetting of suicide and may even lead to Constitutional cannibalism.

The legal position in other countries of the world regarding the law of attempted suicide was taken into consideration. Two countries selected were United Kingdom and United State of America because first is conservative country and second a radical, the first is first in point of time as regard democratic functioning and the second was being regarded as a serious human rights protagonist.

In both these countries law of suicide was not punishable. The latest American position is "Suicide is not crime under the statues of any state in United States. Nor does any state, by statute, make attempting suicide a crime. In twenty two states and three United States territories, however assisting suicide is a crime. If an assistant participates affirmatively in the suicide, for instance by putting the trigger of administering a fatal dose of drugs, Courts agree that the appropriate charge is murder.

In United Kingdom what to speak of attempt to commit suicide even euthanasia (mercy killing) entitles the accused to the benefit of diminished responsibility. It has to be realized that a determined suicide can never be
prevented by the fear of only one year's imprisonment or fine or both as Section 309, IPC seeks to achieve. It is high time we abolished this Section from the penal law of India.

The Court decided on the basis of the above discussion that Section 309 of the Penal Code deserves to be effected from the statue book to humanize our penal laws. It is cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignomising because of his failure to commit suicide. Then an act of suicide can be said to be against religion, morality or public policy, and an act of attempted suicide has no baneful effect on society. Further a suicide or attempt to commit it cause no harm to others, because of which states interference with the personal liberty of the concerned persons is not called for.

Therefore it is held that Section 309 violates Article 21, and so, it is void. The view taken by us is not the only cause of humanization but of globalization also. The right approach to deal with the persons who attempt suicide is not to punish them but to make proper arrangement for their treatment if they are suffering from some diseases.

But in Gian Kaur v. State of Punjab the five member Constitution bench comprising of Justice J.S. Verma, G.N. Ray, M.P. Singh, Faiza Uddin and G.T. Nanawati overruled its decision of 1994 in P. Rathiram/Nagbhhusan Patnayak case. The Court said that the 'right to life' guaranteed under Article 21 of the Constitution did not include the 'right to die' or 'right to be killed', and therefore an attempt to commit suicide under Section 309 IPC or even an abetment of suicide under Section 306 IPC are well within the Constitutional parameters, and are not void or ultra vires. The 'right to die with human dignity' cannot be construed to include within its ambit the right to terminate natural life, at least before the natural process of certain death. The 'right to die', if any, is inherently inconsistent with the 'right to die', as is 'death with life'. The Court said:

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 construerticle21 to include within 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 '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'.

As regards the contention that treating different attempts to commit suicide by the same measure is violative of Article 14 of the Constitution, the Court said, it does not hold good in as much as the nature, gravity and extent of attempt may be taken care of by tailoring the sentence appropriately. Section 309 IPC has only provided the maximum sentence, which is upto one year. It also provided for imposition of fine only as a punishment. It is this aspect which is important and reported decisions show that, even on conviction under Section 309 IPC. In practice, the accused has been dealt with compassion by giving benefit under Section 360 of the Code of Criminal Procedure, 1973 (corresponding to Section 562 of Cr.RC. 1898) and Probation of Offenders Act, 1958.

A careful perusal of the above conflicting rulings of the Apex Court-one holding Section 309 IPC. (Constitutional) valid (1994) while the other (1996) striking it down being violative of Article 21 of the Constitution which guarantees right to life, would reveal that there is ample force in both the contentions. Perhaps the entire matter of retention or abolition of Section 309 IPC from the statute book needs a careful study so as to strike a balance between the two propositions before a legislation is made to abolish Section 309 IPC from the statute book. Perhaps it would be appropriate to abolish attempt to commit suicide from the Penal Code as recommended by the 42nd report of the law commission of India.
(iv) **Dowry Death**

(a) **Introduction**

Marriages are made in heaven indeed, but mothers-in-law, sisters-in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry death, murder-suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up. This development is peculiarly Indian, a "Black Plague" spawned by the dowry system. During the last few decades India has witnessed the black evils of the dowry system in a more acute form in almost all parts of the country since it is practised by almost every Section of the society. It almost a matter of day-to-day occurrence that not only married women are harassed, humiliated beaten thrown out of matrimonial house by husband and forced to commit -suicide, tortured ill-treated but thousands are even burnt to death because parents are unable to meet the dowry demands of in-laws or their husbands.\(^8\)

Every woman enters into wedlock with a many salutary expectations of a happy conjugal life and to be blessed with the most pleasant gift of motherhood.

But in many of the cases increasing greed in the society has been responsible for shattering all these expectations and dowry related deaths have become rampant. Married women who are unable to muster courage to fight against cruelty and harassment meted out to them by their spouses and family members, find no escape other than ending their own life. Not only that dowry related deaths at the cruel hands of greedy in-laws have also attained alarming proportions. In-laws are char tensed to be out-laws for perpetrating terrorism on those whom they vow to teat as their daughters and not mere daughter-in-laws. The malaise of greed of dowry is spreading tentacles in every possible direction irrespective of cast, community or religion taking note of the seriousness and gravity of the problem of the dowry and its cancerous growth on an unprecedented scale has the legis1ature by amending Indian Penal Code, Law of Evidence and Criminal Procedure Code has taken various legislative
measures to plug the loopholes in the law as well as to enact new provisions so as to make the law pragmatic and effective.

The legislature has thus made more strident laws for dealing with and punishing offences against married women. However, the strident (hard) laws have a deterrent effect on the offender only if they are stringently implemented by the Courts to achieve the legislative intent. 86

The first step in the direction was the enactment of the Dowry Prohibition Act, 1961 (28 of 1961). The objects and reasons of enacting the Act read as under:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law that makes the practice punishable and at the same time ensures that any dowry, if given does insure for the benefit of the wife will go a long way to educating public opinning and to the eradication of this evil. 87

In 1984 to make the law effective in order to control and eradicate the menace of dowry rampant on a large scale, the Parliament 88 drastically amended the Dowry Prohibition Act, 1961 vide the Dowry Prohibition (Amendment) Act, 1984. Offences under the Act have now been made cognizable and a police officer can arrest the accused of demanding dowry without a warrant and initiate criminal proceedings against the culprit. The penalty for demanding dowry has been made more stringent besides many other significant changes, such as the establishment of family Court, etc. has been provided in the Act. 89

(b) Dowry related offences under the Indian Penal Code

In brief there are four situations when a married woman is subjected to cruelty and harassment leading to the commission of an offence, viz.

First, When her husband or his family members subject the woman to
cruelly or harassment—Section 498A, IPC would be attracted.

Second, if such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by bums and bodily injury or in abnormal circumstances caused her death within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304B, IPC or dowry death.

Thirdly, if there is proof of the person having intentionally caused woman's death that would attract Section 302, IPC and would amount to murder.

Fourthly, if the husband or any relative of her husband creates a situation which he knows will drive the woman to commit suicide, and she actually does so within a period of seven years of marriage, the case would fall within the ambit of Section 306, IPC (Abetment to suicide).

Besides the amendments in the Dowry Prohibition Act of 1961, two important amendments of significance have been made in the Indian Penal Code, Criminal Procedure Code, 1973 and Law of Evidence 1872 in 1983 and 1986 respectively. These are as given below:

(c) Cruelty and harassment by husband or relatives of husband

In 1983 a new Chapter XXA, i.e., "Of cruelty by husband or relatives of husband" consisting of one Section 498A was added in the Indian Penal Code vide Criminal Law (Second Amendment) Act, 1983. The object of the law is to punish a husband and his relatives who torture and harass the woman with a view to coerce her or any person related to her to meet any unlawful demands or to drive her to commit suicide.

A consequential amendment to the Criminal Procedure Code, 1973 and Law of Evidence of 1872 was made by adding Sections 198A and 113A respectively. Section 198A, Cr PC provides that a Court can take cognizance of the offence under Section 498A, IPC upon police report or upon a complaint made by the person aggrieved of the offence or by her parents, brother, sister,
The offence is non-bailable.

Section 113A, Evidence Act, 1872 shifts the burden of proof from prosecution to that of the accused. According to the said provisions, if it is shown that a woman committed suicide within a period of seven years of her marriage and her husband or such relatives of her husband subjected her to cruelty, the Court may presume that her husband or such relatives of her husband have abetted such suicide. And it is for the husband and such relatives to prove their innocence.

To attract the provisions of Section 304B IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment in connection with the demand for dowry.

(d) Dowry death

In 1986 a new offence known as "Dowry Death" was inserted in the Indian Penal Code as Section 304B by the Dowry Prohibition Amendment) Act, 1986 (43 of 1986) with effect from November 19, 1986. [304B Dowry death.- (1) Where the death of a woman is caused by any or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purpose of this sub-Section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life] The Provisions under Section 304B, IPC are more stringent than that provided under Section 498A of the Penal Code. The offence
is cognizable, non-bailable and triable by a Court of Session.

In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 has inserted Section 113B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place "within seven years of marriage."

The period of seven years, perhaps have been considered cut off period for the reason that a marriage is complete after the bride and bride-groom have taken seven steps before the sacred nuptial fire. One step being considered equivalent to one year. The period of seven years has also been fixed for bigamy under Section 494, IPC to exonerate the husband or wife for marrying again during the lifetime of such husband or wife, if at the time of the subsequent marriage the other party is continuously absent from such person. Therefore the period of seven years, as explained by the Supreme Court in Iqubal Singh, it is considered to be turbulent one after which the legislature assumed that the couple would have settled down in life.

Section 113B of the Evidence Act states that if it is shown that soon before the death of a woman such woman has been subjected to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person has caused the dowry death under Section 304B, IPC. The burden of proof of innocence accordingly shifts on defense.

(e) Meaning of Cruelty

The meaning of cruelty for the purpose of these Sections has to be gathered from the language as found in Section 498A, IPC and as per Explanation clause of that Section. Cruelty means any wilful conduct which is of such a nature as is likely to drive the woman commit suicide or to cause grave injury or danger to life etc., or harassment to coerce her or any other person related to her to meet demand. 'Cruelty' includes both physical and mental
torture. Cruelty and harassment in connection with dowry demand, as stated by the Apex Court in Pawan Kumar\textsuperscript{98} is proved when demand for scooter and fridge, made soon after the marriage by the husband and his relatives. The deceased's failure to meet the demand leading to repeated taunts and maltreatment. Quarrel taking place between husband and deceased, regretting that it would be difficult to see her face in future, are clear proof of cruelty and maltreatment by husband and family members. The accused was accordingly held liable under Section 304B, IPC.

**Venugopal:** Similarly, in Venugopal v. State of Karnataka the appellant husband was held liable for dowry death under Section 304B, IPC for creating a situation whereby the wife within two years of marriage. The facts were of common day occurrence in our social set up. Constant demand of dowry leading to ill treatment, harassment and torture of the wife at the hands of husband soon before her death, led her to take the extreme step of ending life.

**Kans Raj:** In Kans Raj v. State of Punjab\textsuperscript{99} the Apex Court held that the term otherwise than under normal circumstances apparently means not the natural death. The death of Sunita Kumari by suicide had occurred within seven years of her marriage under mysterious circumstances. The facts are as stated below:

Sunita Kumari married to Rakesh Kumar on 9th July, 1988 was found dead on 23rd October, 1988 at the residence of her in-laws at Batala in Punjab. The death was found to have carried not under the ordinary circumstance but was the result of the asphyxias. On postmortem it was found that the deceased had injuries on her person including the ligature mark 20 cm x 2 cm on the front, right and left side of neck, reddish brown in colour starting from left side of neck 2 cm below the left angle of jaw passing just above the thyroid cartilage and going up to a point 2 cm below the right angle of jaw. The parents or the deceased were allegedly not informed about her death. it was a shocking occasion for Ram Kishan, PW5 when he came to deliver some customary presents to her sister on the occasion of Karva Chauth, (a fast observed by married women for the safety and long life of their husbands) when he found the
dead body of his sister Sunita lying at the entrance room and the respondents were making preparations for her cremation. Noticing ligature marks on the neck of her sister, Rain Kishan PW 5 telephonically informed his parents about the death.

On the basis of statement of witnesses and evidence the Additional Session Judge convicted all, the accused husband, father-in-law, mother-in-law, brother-in-law, sister-in-law under Sections 304B, 306 and 498A, I PC, for ten years, seven years and two years rigorous imprisonment respectively. The High Court, however, convicted husband and acquitted other accused giving them benefit of doubt.

The father of the deceased came to the Apex Court against the High Court's acquittal. Allowing the appeal and restoring the trial Court's verdict against the husband, the Apex Court held that the prosecution has proved the persistent demand of dowry and continuous harassment to the deceased by the husband. A demand of Rs. 15,000 for scooter and refrigerator immediately after the marriage was fulfilled by giving him sum of Rs. 20,000. His demand for colour T.V. was also fulfilled. The continuous harassment connected with the demand of dowry is shown to be in existence till 21st September, 1988, when the deceased is reported to have come to her brother's house and met her parents. Thereafter she is not shown to have met any one and finally she was found dead on 23rd of October 1988. All this go to prove the constant harassment, torture at the hands of her husband which finally compelled her to commit suicide for which the husband is liable, however, as regards father-in-law, mother-in-law, brother-in-law and sister-in-law are concerned the Court held accusations against them have not been proved beyond doubt and hence they were acquitted of all the charges as held by the High Court.

It is noted with regret that judiciary has not been consistent in its approach. On times the justices have failed to realise the gravity and seriousness of the problems of helpless young married women, who become prey at the hands of the greedy husbands and in-laws. Many a time the Court insists on prosecution to prove 'cruelty' in spite of statutory presumptions against an accused in cases
of unnatural deaths of the brides within the first seven years of their marriage vide sections 113A and 113B of the Evidence Act, 1872. For instance, in Sarwan Kumar the wife, was found dead by hanging within three years of her marriage. The husband absconded soon after her death and could be arrested only after a year. The trial Court convicted the husband under Section 498A, IPC (instead of Section 304B, IPC for dowry death) on the ground that she was treated cruelly by her husband before her death.

But the High Court acquitted the husband on the ground that the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt. In fact, this was a clear case under Section 304B, IPC of dowry death, since it was an unnatural death of a bride committing suicide within seven years of marriage and further it is proved by the very fact that the husband absconded just after the death of his wife. One fails to understand as to what more proof is required in such a case. Wife is found dead by hanging and the husband is absconding. Even in such a glaring case the Court gives benefit of doubt to the accused.

In G.A. Mohammed Maideen v. State the couple happens to be Muslims from Tamil Nadu. The wife died due to hanging and the husband took the plea of suicide, which was rejected both by the lower as well as the High Court in appeal. The husband was sentenced to seven years of rigorous imprisonment.

In revision before the High Court, an interesting plea was put forward by the accused, that his wife wanted him to set up a separate home and for that he demanded Rs. 50,000 from the father-in-law for taking up a shop in the municipal area. It was alleged that the non-payment of this amount led the torture of the wife and death. Allowing the revision petition, the Madras High Court held that the demand of money for leasing up the shop was not so grave as to be inferred as ‘dowry’ and acquitted the husband. Perhaps the Court failed to realise the purpose and object of the legislature to enact Dowry Prohibition Act, 1961 and related provisions (Sections 304B and 498A) under the Indian Penal Code and Sections 113A and 113B in the Law of Evidence. The Act of 1961 is intended to prohibit the giving or taking of dowry in any form and its demand is punishable
under Section 4 of the Act. However, in spite of changes in the law and stringent provisions the alarming increase of cases of torture, harassment, abated suicides and dowry deaths of young innocent brides have continued unabated. To curb the evil practices of dowry and related offences there is an urgent need of a social movement not only of educating women and making them economically independent, but also realisation of men folk to honour and recognise the dignity and basic human rights of their better halves. The Courts are expected to assume a greater role and take a realistic approach of the problem so as to further the object of the legislation without endangering the application of the principle of natural justice to the accused and victim alike. The practice of dowry in any form must be checked with stem hands and not by showing undue favour and adopting soft attitude towards culprits of these barbarous and heinous crimes.

(f) Dowry-meaning and scope

The term 'Dowry' has not been defined in the Indian Penal Code. However, Section 3048, IPC in Explanation clause has affirmed that 'dowry' shall have the same meaning as defined in Section 2Jo1 the Dowry Prohibition P4 391.(2of 1961).

Section 2(1) of the Act states that 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to the either party to the marriage or to any other person

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahar in the case of persons to whom the Muslim Personal (Shariat) applies.

(g) Essentials of Dowry death

To attract the application of the Section 304B, IPC the following essential
ingredients are required, viz.

(a) Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances)\(^{104}\)

(b) Death should have occurred within a period of seven years of her marriage;

(c) The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(d) Cruelty or harassment should be for or in connection with the demand for dowry;

(e) Cruelty or harassment should have been meted out to the woman soon before her death.

Clause (1) of the Section 304B, IPC defines 'dowry death' and clause (2) prescribes punishment for dowry death.

According to clause (1) of Section 304B, the death of a woman will be designated as 'dowry death' when it is caused:

(i) by burns, bodily injury, or occurs otherwise than in ordinary circumstances; and

(ii) as a result of cruelty, or harassment caused by her husband or her husband's relations, or in connection with any demand for dowry.

In case of death of a woman caused under the above circumstances, the husband and the husband's relatives will be presumed to have caused a 'dowry death' and be liable for the offence, unless it is proved otherwise. That is to say, the burden of proof shifts on the part of the accused to prove his innocence unlike other presumed innocent.

Clause (2) prescribes a minimum punishment of 7 years of imprisonment which may extend up to life imprisonment in case of dowry death.

As stated earlier an important feature of crimes that led to dowry deaths
are that they are invariably committed within the safe precincts of home and the culprits are mostly close relations-brother-in-law, mother-in-law and sisters-in-law living under the same roof. The phenomenon is a by-product of the exploitation of newly married women by husbands and their relations in direct connivance with each other. The family ties are so strong that the truth will never come out and there would be no eye witness to testify against the guilty in a Court of law. The circumstances are hostile to an early or easy discovery of the truth. Punitive measures may be adequate in their formal content, but their successful enforcement is a matter of great difficulty. This is why guilty men go scot-free and are seldom brought to book and punished.\textsuperscript{105}

To curb the practice of dowry death there is an urgent need to enforce effectively the punitive and preventive measures with iron hands. At the same time the law must be made more effective. Police should be more watchful with respect to such offences, as pointed out by the Supreme Court in V.N. Pawar v. Site of Maharashtra,-

\textit{...Wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitisation mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier proof of such special class of murders on establishing certain basic facts must be provide for by appropriate legislation.}\textsuperscript{106}

As stated by Justice Dr. AS. Anand in Kundula Bala Subrahmanyam.\textsuperscript{107}

"There has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilised society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live". Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and sad that in
most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be 'Mamma's baby' and the umbilical cord appears not to have been cut even at that stage!"

Perhaps the need of the hour is to replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent, the possibility of this pernicious social evil dying its natural death may not be a dream.

(h) Distinction between Section 304B, IPC (Dowry Death) and Section 498A, IPC (Cruelty by husband or relatives of husband)

Section 304B, IPC and Section 498A, IPC have been added in the Code to punish dowry 'related crimes. The provisions are not mutually exclusive. However, the scope of the two Sections are different. For example,-

1. Under Section 304B, IPC it is the dowry death that is punishable and such death should have occurred within a period of seven years of the marriage; where as under Section 498A, IPC cruelty by husband or relative of husband is punishable and there is no period of limitation of seven years provided for prosecution in such cases. The husband or his relative would be liable for subjecting the woman to 'cruelty' any time after the marriage.

2. Under Section 498A, IPC cruelty as such is punishable; but cruelty or harassment of a married woman when it results in death of the woman would attract Section 304B, IPC.

3. Under Section 304B, IPC punishment may extend upto imprisonment of life with a minimum of seven years of imprisonment; whereas under Section 498A, IPC punishment may
extend upto three years of imprisonment and fine only. 'Cruelty' is a common essential to both the offences and that has to be proved before a person is convicted.

4. The Explanation clause to Section 498A, IPC gives the meaning of 'cruelty' but there is no such explanation about the meaning of 'cruelty' under Section 304B.

5. Having regard to the common background to these offences the meaning 'cruelty or harassment under Section 304B will be the same as given in the Explanation clause to Section 498A. Thus the offence being to the common background a person charged and acquitted under Section 304B, IPC can be convicted under Section 498A, IPC for a lesser offence without charge being there if such a case is made out. However, to avoid technical defect it is proper to frame charges under both the Sections. If the case is established under both Sections, convictions would be made under both. Separate sentence need not be awarded under Section 498A, IPC and under Section 304B.\(^{108}\)

(i) **When possibility of suicide could not be excluded**

Where the complaints made in the letters and confined to ill-treatment, loneliness, neglect and anger of the husband but no apprehension has been expressed in any of the letters that the deceased expected imminent danger to her life from her husband, and from the recitals in the letters one can safely hold that there was a clear possibility and a tendency on her part to commit suicide due to desperation and frustration, and the witnesses were interested and were not worthy of evidence it could not be said that the only irresistible inference that could be drawn from the evidence was that it was the appellant who had murdered the deceased.\(^{109}\)

(j) **Sections 304-B and Section 306 (I.P.C.) : Distinction**

Section 306, which was merely an offence of abetment of suicide earlier,
remained in the statute book without any practical use till 1983, By the introduction of Section 113A in the evidence Act, the said offence under Section 306 has acquired vides dimension and has become a serious marriage-related offence. Section 113A says that under certain condition, almost similar to the conditions for dowry death, The Court may presume having regard to the circumstances of the case. That such suicide has been abetted by her husband, etc. As there is no compulsion on the presumption adverse to him. However in respect of an offence under Section 304B, The Court has a statutory compulsion, merely on the establishment of two factual positions that (1) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage. (2) Soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry, to presume that the accused has committed dowry death. The burden is on the accused to disprove it. If he fails to rebut the presumption. The Court is bound to act on it.\textsuperscript{110}

(k) Dowry death and presumption under Section 113-B, Evidence Act -

The Dowry Prohibition Act is both a remedial and penal statute. As such Courts are expected to construe the provisions in a way that the purpose is fulfilled through and within the limits of the language employed in the statute. If a case under the provisions of the Dowry Act or the penal provisions related to it is established then the Courts are to be stringent in dealing with the culprits. However, the cardinal principle of criminal law that unless guilt is established, the person accused should not be punished only because a lesson is to be given to the person involved in the crime or the Court is morally satisfied about the commission of the crime. The Courts while taking stringent view and despite the obligation of making the Legislative enactment a success have also to keep in mind that the charge should be made out.

In the case of Chanchal Kwnari v. Union Territory, Chandigarh\textsuperscript{117} it has been observed that in the absence of dependable evidence in regard to the actual abetment, by any of the accused, for the deceased to commit suicide
accused are held entitled to be acquitted.

In the case of Ashok Kumar v. State of Punjab,\textsuperscript{112} when the suicide by wife was within seven years of the marriage, the question arose about the presumption under Section 113-B of the Evidence Act. Wife had committed suicide by consuming insecticide. During the course of Investigation, it was not disclosed that the husband or any of his relations was oppressive or in any manner cruel towards the deceased. However, during the course of trial it was alleged that deceased was maltreated by her husband. On the facts and circumstances of the case, it was held that prosecution had failed to establish that the husband was guilty of cruelty to wife. Hence presumption under Section 113-B of the Evidence Act was not drawn.

In the case of Dalip Singh v. State of Punjab\textsuperscript{113} the wife died by hanging within one year of the marriage. Only two witnesses, father and brother of the deceased were examined to prove the maltreatment and harassment meted out to the deceased because of demand of dowry. The prosecution case being established, the fact of only two witnesses being relatives of the deceased did not come in the way of conviction of the accused.

In the case of Mohan Lal v. State of Punjab\textsuperscript{114} the question about the legality of abetment to commit suicide came for consideration before the Court. The admitted position was that the wife had committed suicide by burning herself. Her husband and mother-in-law were the accused and the allegation was that they abetted her to commit suicide. There was no allegation about the accused being present at the time of the occurrence. The only evidence was that on earlier occasions they used to maltreat the deceased and used to tell her that she had not brought sufficient dowry. That fact alone was not taken to be sufficient to connect the accused with the commission of the crime.

In the instant case the defense version is that Veerpal Kaur was insisting upon her husband, the appellant, to live separate from her mother-in-law and she as well as her relatives wanted Gurditta Singh to get the land transferred in her name and in the names of her two sons. Naseed Kaur, mother of Veerpal
Kaur at first admitted in cross-examination that many a times Gurditta Singh has asked to live separate from Chand Kaur but he did not agree. Then, taking hint from the objection by the counsel for the prosecution she expressed her ignorance about it. She also expressed ignorance about Gurdifta Singh telling that he being the only son of his mother how could he live separate from her. The statement of the witness denotes that Veerpal Kaur desired to live separate from her mother-in-law and her husband was not agreeing to it. Darshan Singh (D.W. 1) the neighbourer, has stated that Veerpal Kaur used to tell Chand Kaur that she along with her husband may be permitted to live separate and Chand Kaur used to say that Gurditta was her only son who has been brought up by her with great difficulty and therefore, she cannot separate him. It has been suggested to Naseed Kaur that she in order to grab the land wanted it to be transferred in the names of the sons of the deceased and because of the reluctance of the appellant to do so was against him. Naseed Kaur answered that the two Sons of Veerpal Kaur were with the sister of Gurditta Singh. That she wants to have the children but there is no Intention for grabbing the land. she admitted that a suit has been filed by her son against Gurditta Singh for getting the land transferred in the names of the children. Nakshatra Singh (D.W.2) who was in Jail from March 11, 1988 to January 1989 under TADA Act has stated that during that period Naseeb Kaur used to go there to see Gurditta and used to tell that he should transfer the land in the name of the children and if he does so, she will not state against him. Naseeb Kaur has denied this fact but admitted that her son has instituted a case against Gurditta Singh for getting the land transferred in the name of his sons.

The defence version about there being some strained feelings between Veerpal Kaur and her mother-in-law on account of the former's Intention to live separate appears to be plausible. However, the argument of the learned Public Prosecutor is that there is no cogent convincing evidence to establish that Veerpal Kaur has consumed insecticide on account of any quarrel with her mother-in-law on the day of occurrence, the presumption under Section 113-B of the Evidence Act has rightly been drawn by the learned trial Judge. The words
"it is shown' occurring in Section 304-B are of significance for the reason that
the initial burden of proving that circumstances envisaged by Section 304-B.
I.P.C. did exist is on the prosecution. This being shown or established, the
question of presumption under Section 113-B of the Evidence Act would arise.
In other words to draw a presumption under Section 113-B of the Evidence
Act, the necessary Ingredient that It Is shown that soon before her death she
was subjected to cruelty or harassment. In connection with the demand of dowry
has to be proved. Only when these facts are proved then by virtue of the deeming
provision of Section 304-B. the Court shall presume that the husband or any
relative of the husband had caused dowry death. Whenever It is directed by the
Evidence Act that the Court shall presume a fact, that fact shall be taken as
proved unless and until it is disproved. Meaning thereby that the presumption
is a rebuttable presumption. In this view of the matter, the prosecution has to
prove the main factor of cruelty or harassment in connection with any demand
of dowry.

Though cruelty at any time after the marriage may cause depression in
the mind of the victim, the cruelty and harassment envisaged by Section 304-B
is to be seen before the death of a woman. The Courts are to scrutinise the
evidence carefully because cases are not rare in which occasionally there is
demand and then the atmosphere becomes calm and quiet and then again there
is demand. Where a wife dies in the house of the husband within the short span
of seven years of her marriage, it is of considerable difficulty to assess the
precise circumstances in which the Incident occurred because ordinarily
independent witnesses are not available as the torture and harassment is
confined in the four walls of the house. However, the Courts are to be vigilant to
scrutinise the evidence regarding the harassment and torture carefully if the
witnesses are relatives of the deceased and relations between them and her
In-laws are strained for any reason whatsoever It might be. Urge for living is a
natural phenomenon in mankind. A person would not embrace death unless there
Is some psychological trouble or mental agony or such circumstances that the
person committing suicide may think that the life he or she Is living Is more
miserable than the pangs and agony of death. The power of tolerance would
vary from person to person. Some persons try to make the life easy by tolerance while others even on petty points bring an end to their life.

Coming to the facts of the present case on hand, ornaments had of course been taken from the house of the appellant but that does not prove that the ornaments were in possession of Chand Kaur and Veerpal Kaur could not use them. There is no evidence that there was any demand prior to the marriage. Regarding the demand subsequent to the marriage, the two witnesses have improved their version in the Court from what they have deposed before the Police. Statement of Balvindra Singh (P.W. 2) is that if his sister would have complained of any cruelty or harassment, he would not have sent her back when she has come to his house about twenty days prior to her death. It is important no note that no panch who might have intervened for giving rupees twelve thousand on the birth of the first child, a year after the marriage, has been examined to substantiate the prosecution case. It is also noteworthy that the three witnesses on the point had admitted that nothing was given within five years preceding the incident.

In such circumstances, simply because a young lady has brought her life to a tragic end by committing suicide by consuming Insecticide it cannot be said that she had embraced death on account of any demand of dowry by her husband or mother-In-law which was not satisfied. While deciding the case of the husband appellant, this fact cannot be overlooked that he was not at the house at the relevant time and on being informed, he went to the house and took necessary step to get his wife treated by taking her to Devta Nursing Home. There is nothing to suggest any quarrel between the spouses. In the absence of material to bring home the guilt against the accused, the Court does not feel inclined to hold that the case against the appellant is established.\textsuperscript{115}

The proximity of time between the alleged ill-treatment and time of death is rightly relevant factor and is an essential and necessary evidence for proof of a case of dowry death. In the present case, both P.Ws. 5 and 6 have stated that about one month after delivery Renubala was sent back to the house of the appellants. The Court had already fixed the time during which Renubala could
be with her parents i.e., from September 91 till January-February, 92. Her time of return to the in-law's house must have been sometime in the month of April or May 92. There is no evidence worth the name that from April 92 till the occurrence in December, 92 Renubala at any time was ill-treated or tortured. P.W.3 corroborated the evidence of P.W.2 in the same manner. Both of them were allowed to be cross-examined by the prosecution. But nothing has been brought out in the cross-examination to support the prosecution case. Therefore, it will not be safe to hold that Renubala committed suicide?¹¹⁶

One day before the fateful day the husband saturated the mental agony and cruelty by quarrelling with the wife (deceased) even at her sister's place, leaving no option which led the deceased to commit suicide. This mental state is further clear by the following words which she spoke to her sister, "It would be difficult now to see her face in the future'. All this would constitute to be an act which would be an abetment for the commission of the suicide by the girl.

There is direct evidence, as stated by the aforesaid witnesses P.Ws 5 and 7 that soon before her death she was subjected to cruelty by the husband. However, in so far appellants Nos. 2 & 3 father-in-law and the mother-in-law are concerned, the evidence is of a general nature. No convincing evidence has been led that the deceased was subjected to cruelty by appellant Nos. 2 & 3. Convictions and sentences of appellant No. 1 are maintained but the convictions and sentences of the appellants Nos. 2 & 3 are set aside.¹¹⁷

The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Secs. 498-A, I.P.C. and 113-A of Indian Evidence Act. Although, the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubt about the complicity of the accused In respect of the of offences alleged, It should be borne In mind that there is no absolute standard for proof In a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the materials placed on record.¹¹⁸
SATI (Practice)

(i) Introduction

Sati (Devanagari:, the feminine of sat "true") (also suttee) was a funeral practice among some Hindu communities in which a recently-widowed woman would either voluntarily or by use of force/coercion immolate herself on her husband's funeral pyre. This practice is now very rare and outlawed in modern India.\(^{119}\)

(ii) Origin

The term is derived from the original name of the goddess Sati (also known as Dakshayani), who immolated herself because she was unable to bear her father Daksh's humiliation of her (living) husband Shiva. The term may also be used to refer to the widow herself. The term sati is now sometimes interpreted as "chaste woman."

Few reliable records exist of the practice before the time of the Gupta empire, approximately 400 AD. Some instances of voluntary self-immolation by both women and men that may be regarded as at least partly historical accounts are included in the Mahabharata and other works. However, large portions of these works are relatively late interpolations into an original story,\(^{120}\) rendering difficult their use for reliable dating. Also, neither immolation nor the desire for self-immolation are regarded as a custom in the Mahabharata. Use of the term 'sati' to describe the custom of self-immolation never occurs in the Mahabharata, unlike other customs such as the Rajasuya yagna. Rather, the self-immolations are viewed as an expression of extreme grief at the loss of a beloved one.

The ritual has prehistoric roots, and many parallels from other cultures are known. Compare for example the ship burial of the Rus' described by Ibn Fadlan, where a female slave is burned with her master.\(^{121}\)

Aristobulus of Cassandreia, a Greek historian who traveled to India with the expedition of Alexander the Great, recorded the practice of sati at the city of Taxila. A later instance of voluntary co-cremation appears in an account of an
Indian soldier in the army of Eumenes of Cardia, whose two wives vied to die on his funeral pyre, in 316 BC. The Greeks believed that the practice had been instituted to discourage wives from poisoning their husbands.\textsuperscript{122}

Voluntary death at funerals has been described in northern India before the Gupta empire. The original practices were called anumarana, and were uncommon. Anumarana was not comparable to later understandings of sati, since the practices were not restricted to widows - rather, anyone, male or female, with personal loyalty to the deceased could commit suicide at a loved one's funeral. These included the deceased's relatives, servants, followers, or friends.

Widow burning, the practice as understood today, started to become more extensive after the end of the Gupta empire, around A.D. 500.

At about this time, instances of sati began to be marked by inscribed memorial stones. The earliest of these are found in Sagar, Madhya Pradesh, though the largest collections date from several centuries later, and are found in Rajasthan. These stones, called devil, or sati-stones, became shrines to the dead woman, who was treated as an object of reverence and worship. They are most common in western India.\textsuperscript{123}

By about the 10th century sati, as understood today, was known across much of the subcontinent. It continued to occur, usually at a low frequency and with regional variations, until the early 19th century.

(iii) Practice -

The Commission of Sati (Prevention) Act of 1987 Part 1, Section 2(c) defines Sati as:

The burning or burying alive of- (i) any widow along with the body of her deceased husband or any other relative or with any Article, object or thing associated with the husband or such relative; or (ii) any woman along with the
body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise.\textsuperscript{124}

The act of sati is said to exist voluntarily; from the existing accounts, many of these acts do indeed occur voluntarily. The act may have been expected of widows in some communities, and the extent to which social pressures or expectations constitute compulsion has been much debated in modern times. However, there were also instances where the wish of the widow to commit sati was not welcomed by others, and where efforts were made to prevent the death.\textsuperscript{125}

Traditionally, a person's funeral would have occurred within a day of the death, requiring decisions about sati to be made by that time. When the husband died elsewhere, the widow might still die by immolation at a later date.

Sati often emphasized the marriage between the widow and her deceased husband. For instance, rather than mourning clothes, the to-be sati was often dressed in marriage robes or other finery. In the preliminaries of the related act of Jauhar, both the husbands and wives have been known to dress in their marriage clothes and re-enact their wedding ritual, before going to their separate deaths.

Accounts describe numerous variants in the sati ritual. The majority of accounts describe the woman seated or lying down on the funeral pyre beside her dead husband. Many other accounts describe women walking or jumping into the flames after the fire had been lit,\textsuperscript{126} and some describe women seating themselves on the funeral pyre and then lighting it themselves.\textsuperscript{127}

Some written instructions for the ritual exist. For instance, the Yallajeeyam provides detailed instructions about who may commit sati, cleansing for the sati, positioning, attire, and other ritual aspects.\textsuperscript{128}

(a) **Compulsion** -

Sati was supposed to be voluntary, but it is agreed that in many cases it
may not have been voluntary in practice.

Setting aside the issue of social pressures, many accounts exist of women being physically forced to their deaths.

Pictorial and narrative accounts often describe the widow being seated on the unlit pyre, and then tied or otherwise restrained to keep her from fleeing after the fire was lit. Some accounts state that the woman was drugged. One account describes men using long poles to prevent a woman from fleeing the flames.¹²⁹

(b) Royal funerals -

Royal funerals sometimes have included the deaths of many wives and concubines. A number of examples of these occur in the history of Rajasthan.¹³⁰

Maharani Raj Rajeshwari Devi of Nepal became regent in 1799 in the name of her son, after the abdication of her husband, who became a sanyasi. Her husband returned and took power again in 1804. In 1806 he was assassinated by his brother, and ten days later on 5 May 1806, his widow was forced to commit sati.¹³¹,¹³²

(c) Symbolic sati -

There have been accounts of symbolic sati in some Hindu communities. A widow lies down next to her dead husband, and certain parts of both the marriage ceremony and the funeral ceremonies are enacted, but without her death.¹³³

(d) Jauhar -

The Rajput practice of Jauhar, known from Rajasthan and Madhya Pradesh was the collective suicide of a community facing certain defeat in war. It consisted of the mass immolation of women, children, the elderly and the sick, at the same time that their fighting men died in battle.
(e) **Burials -**

In some Hindu communities, it is conventional to bury the dead. Deaths of widows have been known to occur in these communities, with the widow being buried alive beside her husband, in ceremonies that are largely the same as those performed in an immolation.\textsuperscript{134}

(iv) **Prevalence -**

Records of sail exist across most of the subcontinent. However, there seem to have been major differences historically, in different regions, and among different communities.

(a) **Numbers -**

There are no reliable figures for the numbers who died by sail across the country. A local indication of the numbers is given in the records kept by the Bengal Presidency of the British East India Company. The total figure of known occurrences for the period 1813 to 1828 is \(g,135\); another source gives a comparable number of 7,941 from 1815 to 1828, thus giving an average of about 507 to 567 documented incidents per year in that period. Raja Ram Mohan Roy estimated that there were ten times as many cases of Sati in Bengal compared to the rest of the country.\textsuperscript{137} Bentinck, in his 1829 report, states that 420 occurrences took place in one (unspecified) year in the 'Lower Provinces' of Bengal, Bihar and Orissa, and 44 in the 'Upper Provinces' (the upper Gangetic plain).\textsuperscript{138} Given a population of over 50 million at the time for the Presidency, this suggests a maximum frequency of immolation among widows of well under 1%.

(b) **Communities -**

It is said by some authorities that the practice was more common among the higher castes, and among those who considered themselves to be rising in social status. It was little known or unknown in most of the population of India and the tribal groups, and little known or unknown in the lowest castes. According to at least one source, it was very rare for anyone in the later Mughal empire
except royal wives to be burnt. However, it has been said elsewhere that it was unusual in higher caste women in the south.

(c) **Regional variations -**

It was known in Rajasthan from the earliest (6th century) to the present. About half the known sati stones (about 150 in total) in India are in Rajasthan. However, the extent to which individual instances of deaths resulted in veneration (glorification) implies that was not very common.

It is known to have occurred in the south from the 9th century through the period of the Vijayanagara empire. Madhavacharya, who is probably the best known of those historical figures who justified the practice, was originally a minister of the Court of this empire. The practice continued to occur after the collapse of the empire, though apparently at a fairly low frequency. In one instance more than fifty women committed Sati in Hampi after the the war of Talikot. In the North-Western Karnataka about fifteen sati stones brought from Vijayanagara can be found. The actual immolation of widows might have taken place elsewhere. The relatives of Sati when they migrated took Sati stones along with them and resurrected at their new abodes. A record exists of a minister of the kingdom of Mysore giving permission for a widow to commit sati in 1805.

In the Upper Gangetic plain, while it occurred, there is no indication that it was especially widespread. The earliest known attempt by a government to stop the practice took place here, that of Muhammad Tughlaq, in the Sultanate of Delhi in the 14th century.

In the Lower Gangetic plain, the practice may have reached a high level fairly late in history. Based on available evidence and the existing reports of the occurrences of it, the greatest incidence of sati in any region and period, in terms of total numbers occurred in Bengal and Bihar in the late 18th and early 19th centuries. This was during the earlier period of British rule, and before its formal abolition. The Bengal Presidency kept records from 1813 to 1829.
The frequency increased in periods of hardship and famine. Ram Mohan Roy suggested that it was more prevalent in Bengal than in the rest of the subcontinent. An unusually large number of the surviving reports for this period are from Bengal, also suggesting that it was most common there.

In modern times, sati has been largely confined to Rajasthan, mostly in or near Shekhawati, with a few instances in the Gangetic plain.

(d) Continued prevalence -

Sati still occurs occasionally, mostly in rural areas. A well documented case from 1987 was that of 18-year old Roop Kanwar. In response to this incident, some more recent legislation against the practice was passed, first by the state government of Rajasthan, then by the central government of India.

On 18 May 2006, Vidyawati, a 35-year-old woman allegedly committed sati by jumping into the blazing funeral pyre of her husband in Rari-Bujurg Village, Fatehpur district in the State of Uttar Pradesh.144 On 21 August 2006, Janakrani, a 40-year-old woman, burnt to death on the funeral pyre of her husband Prem Narayan in Sagar district.145

(V) Justifications and criticisms -

Brahmin scholars of the second millennium justified the practice, and gave reasoning as to how the scriptures could be said to justify them. Among them were Vijnanesvara, of the Chalukya Court, and later Madhayacharya, theologian and minister of the Court of the Vijayanagara empire, according to Shastri, who quotes their reasoning. It was lauded by them as required conduct in righteous women, and it was explained that this was considered not to be suicide (suicide was otherwise variously banned or discouraged in the scriptures). It was deemed an act of peerless piety, and was said to purge the couple of all accumulated sin, guarantee their salvation and ensure their reunion in the afterlife.
(a) **Law books -**

These are relatively late works. Justifications for the practice are given in the Vishnu Smriti.

Now the duties of a woman (are) ... After the death of her husband, to preserve her chastity, or to ascend the pile after him.\(^{146}\)

There is also justification in the later work of the Brihaspati Smriti (25-1). Both this and the Vishnu Smriti date from the first millennium.

The Manu Smriti is often regarded as the culmination of classical Hindu law, and hence its position is important. It does not mention or sanction sati though it does prescribe life-long asceticism for most widows.

(b) **Scriptures -**

Although the myth of the goddess Sati is that of a wife who dies by her own volition on a tire, this is not a case of the practice of sati. The goddess was not widowed, and the myth is quite unconnected with the justifications for the practice.

The Puranas have examples of women who commit sati and there are suggestions in them that this was considered desirable or praiseworthy: A wife who dies in the company of her husband shall remain in heaven as many years as there are hairs on his person. (Garuda Purana 1.107.29) According to 2.4.93 she stays with her husband in heaven during the rule of 14 Indras, i.e. a kalpa.

In the Ramayana, Tara, in her grief at the death of husband Vali, wished to commit sati. Hanūman, Rama, and the dying Vali dissuade her and she finally does not immolate herself.

In the Mahabharata, Madri, the second wife of Pandu, immolates herself. She holds herself responsible for the death of her husband, who had been cursed with death if he ever had intercourse. Be died while performing the forbidden act with Madri, who blamed herself for not having rejected his advances, although she was well aware of the curse.
Passages in the Atharva Veda, including 13.3.1, offer advice to the widow on mourning and her life after widowhood, including her remarriage.

Argument that the Rig Veda Sanctions sati - It is often claimed that this most ancient text sanctions or prescribes sati. This is based on verse 10.18.7, part of the verses to be used at funerals. Whether they even describe sati or something else entirely, is disputed, The hymn is about funeral by burial, and not by cremation. There are differing translations of the passage. The translation below is one of those said to prescribe it.

इमा नारीरिविधवा: सुप्रतीराज्जनेन सर्पिष्ठ संविशान्तु।
अनशब्दोऽनमीवाः सुल्ला आ रोहन्तु जनयोयोनिमिन्ये।। (RV 10.18.7)

Let these women, whose husbands are worthy and are living, enter the house with ghee (applied) as collyrium (to their eyes). Let these wives first step into the pyre, tearless without any affliction and well adorned. 147

The text does not mention widowhood, and other translations differ in their translation of the word here rendered as 'pyre' (yoni, literally "seat, abode"; Griffith has "first let the dames go up to where he lieth"). In addition, the following verse, which is unambiguously about widows then contradicts any suggestion of the woman's death; it explicitly states that the widow should return to her house.

उद्दीष्यं नार्यिभि जीवलोकं गतासुमेतमुप शेष एहि।
हस्तग्राभस्य दिधिपोस्तवेदं पत्युज्ञिनित्वमभि सम्भविः।। (RV 10.18.8)

Rise, come unto the world of life, O woman - come, he is lifeless by whose side thou liest. Wifehood with this thy husband was thy portion, who took thy hand and wooed thee as a lover. 148

A reason given for the discrepancy in translation and interpretation of verse 10.18.7, is that one consonant in a word that meant house, yonim agree "foremost to the yoni", was deliberately changed by those who wished claim scriptural justification, to a word that meant fire, yomiagne. 149
(c) **Counter-arguments within Hinduism -**

No early descriptions or criticisms of the practice within Hinduism, (or in the other native religions of Buddhism or Jainism), are known before the Gupta period, as the practice was little known at that time.

Explicit criticisms later in the first millennium included that of Medhatithi, a commentator on various theological works. He considered it suicide, which was forbidden by the Vedas

*One shall not die before the span of one’s life is run out,*

Another critic was Bana, who wrote during the reign of Harsha. Bana condemned it both as suicide, and as a pointless and futile act.

Reform and bhakti movements within Hinduism tended to be anti-caste, favoured egalitarian societies, and in line with the tenor of these beliefs, they generally condemned the practice, sometimes explicitly. The Alvars condemned sati, in the 8th century. The Virashaiva movement in the 12th and 13th centuries, also condemned it.

In the early 19th century, Ram Mohan Roy wrote and disseminated arguments that the practice was not part of Hinduism, as part of his campaign to ban the practice.

(d) **Non-Hindu views and criticisms -**

The Sikh religion explicitly proscribed the practice, by about 1500 AD.

The principal early foreign visitors to the subcontinent, who left records of the practice, were from Western Asia, mostly Muslim, and later on, Europeans. Both groups were fascinated by the practice, and they sometimes described it as horrific, but they also often described it as an incomparable act of devotion. Ibn Battuta described an instance, but said that he collapsed or fainted and had to be carried away from the scene. European artists in the eighteenth century produced many images for their own native markets, showing the widows
as heroic women, and moral exemplars.\textsuperscript{154}

As Islam established itself in the subcontinent, opinions about sati changed and it was increasingly regarded as a barbaric practice. The earliest known governmental efforts to halt the practice were undertaken by Muslim rulers, including Muhammad Tughlaq.

Europeans also showed a change in their attitudes regarding local customs as their home countries became dominant local powers. The earliest Europeans to establish themselves were the Portuguese in Goa. They tried early on to override local customs and practices, including sati, as they attempted to Christianise territories in their control. The British entered India as a trading body, and in the earlier periods of their rule, they were largely indifferent to local practices. The practice of sati, and its later legal abolition by the British (along with the suppression of the thuggee) went on to become one of the standard justifications for British rule. British attitudes in their later history in India are usually given in the following much repeated quote, usually ascribed to General Napier -

\begin{quote}
You say that it is your custom to burn widows. Very well. We also have a custom: when men burn a woman alive, we tie a rope around their necks and we hang them. Build your funeral pyre; beside it, my carpenters will build a gallows. You may follow your custom. And then we will follow ours. \textsuperscript{155}
\end{quote}

In her Article "Can the Subaltern Speak?" Gayatri Spivak, then an English professor at Columbia University, discusses whether sati can be a form of self-expression by women who cannot demonstrate their independence in any other manner.\textsuperscript{156}

\textbf{(vi) Suppression -}

\textbf{(a) Mughal period -}

Akbar required that permission be granted by his officials, and these officials were instructed to delay the woman's decision for as long as possible.
The reasoning was that she was less likely to choose to die once the emotions of the moment had passed. In the reign of Shah Jahan, widows with children were not allowed to burn under any circumstances. In other cases, governors did not readily give permission, but could be bribed to do so. Later on in the Mughal period, pensions, gifts and rehabilitative help were offered to the potential sati to wean her away from committing the act. Children were strictly forbidden from following the practice. The later Moghul rulers continued to put obstacles in the way but the practice still persisted in areas outside their capitals.

Guru Nanak, the first Guru of the Sikhs spoke out against the practice of sati.

The strongest attempts to control it were made by Aurangzeb. In 1663, he "issued an order that in all lands under Mughal control, never again should the officials allow a woman to be burnt". Despite such attempts however, the practice continued, especially during periods of war and upheaval.

(b) **British and other European territories -**

By the end of the 18th century, the practice had been banned in territories held by some European powers. The Portuguese banned the practice in Goa by about 1515, though it is not believed to have been especially prevalent there. The Dutch and the French also banned it in Chinsurah and Pondicherry. The British who by then ruled much of the subcontinent, and the Danes, who held the small territories of Tranquebar and Serampore, permitted it until the 19th century.

Attempts to limit or ban the practice had been made by individual British officers in the 18th century, but without the backing of the British East India Company. The first formal British ban was imposed in 1798, in the city of Calcutta only. The practice continued in surrounding regions. Toward the end of the 18th
century, the evangelical church in Britain, and its members in India, started campaigns against sati. Leaders of these campaigns included William Carey and William Wilberforce, and both appeared to be motivated partly by a desire to convert Indians to Christianity. These movements put pressure on the company to ban the act, and the Bengal Presidency started collecting figures on the practice in 1813.

From about 1812, the Bengali reformer Raja Rammohan Roy started his own campaign against the practice. He was motivated by the experience of seeing his own sister-in-law commit sati. Among his actions, he visited Calcutta cremation grounds to persuade widows not to so die, formed watch groups to do the same, and wrote and disseminated Articles to show that it was not required by scripture.

On 4 December 1829 the practice was formally banned in the Bengal Presidency lands, by the then governor, Lord William Bentinck. The ban was challenged in the Courts, and the matter went to the Privy Council in London, but was upheld in 1832. Other company territories also banned it shortly after. Although the original ban in Bengal was fairly uncompromising, later in the century British laws include provisions that provided mitigation for murder when "the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent"\(^\text{161}\)

Sati remained legal in some princely States for a time after it had been abolished in lands under British control. The last such state to permit it, Jaipur, banned the practice in 1846.

(c) Modern times -

Following outcries after each instance, there have been various fresh measures passed against the practice, which now effectively make it illegal to be a bystander at an event of sati. The law now makes no distinction between passive observers to the act, and active promoters of the event; all are supposed to be held equally culpable. Other measures include efforts to stop the
'glorification' of the dead women.

Following the outcry after the Sati of Roop Kanwar, the Indian Government enacted the Rajasthan Sati Prevention Ordinance, 1987 on October 1, 1987 and later passed the Commission of Sati (Prevention) Act, 1987.

The Prevention of Sati Act makes it illegal to abet, glorify or attempt to commit Sati. Abetment of Sati, including coercing or forcing someone to commit Sati can be punished by death sentence or life imprisonment, while glorifying Sati is punishable with 1-7 years in prison.

However, enforcement of these measures is not always consistent. The National Council for Women (NCW) has suggested amendments to the law to remove some of these flaws.

On October 11, 2008, an elderly woman committed 'sati' by jumping into her 80-year-old husband's funeral pyre at Checher in Kasdol block of Chhattisgarh's Raipur district.

(vii) Distinction between 'Sati' and attempt to commit suicide -

The act of 'Sati' as stated earlier is not an attempt to commit suicide; rather it is a most barbaric and shameful social evil which demands harsh and deterrent punishment. The punishment should not be accorded to the innocent, illiterate and helpless woman who attempts to commit (or become) 'Sati', but the punishment should be given to those who perpetuate, glorify and abet Sati. As stated by Justice Krishna Iyer:

"Law and life must go together and the interpretation of the penal law of this country can not lag behind the cultural compulsions that civilised life commands. I have no doubt that any humanist jurist will disagree with the interpretation that sati is suicide or murder; any person who abets vicariously or sub silencio is also guilty. The board imagination activist construction of sections 306, 307 and 309 I.P.C. will definitely rope in even those who glorify and celebrate the sati incident."
The Problem of sati and the problem of attempt to commit suicide are two different problems. The former depicts the barbaric attitude and approach of our illiterate society towards a widow, while the latter deals with a helpless, frustrated and mentally sick victim of adverse circumstances.

The two need different treatement. In fact the provision of Section 306 and 307 I.P.C. had firm implementation. The enactment of law\textsuperscript{168} to deal firmly with sati abettors by prescribing life imprisonment is a welcome step.

**Euthanasia**

Euthanasia (literally "good death" in Ancient Greek) refers to the practice of ending a life in a painless manner. As of 2008, some forms of euthanasia are legal in Belgium\textsuperscript{169}, Luxemburg\textsuperscript{170}, The Netherlands, Switzerland, the U.S. state Oregon\textsuperscript{171} and Thailand\textsuperscript{172}. Stances on euthanasia vary greatly; it is called murderous by some and merciful by others. Such controversy arises in part from the serious moral issues attached to the subject and in part from the fact that "euthanasia" is an umbrella term that describes a number of different methods. Accordingly, more specific terminology is often used in order to facilitate discussions of euthanasia.

**Classification of euthanasia**

(a) **Euthanasia by consent**

Euthanasia may be conducted with consent (voluntary euthanasia) or without consent (involuntary euthanasia). Involuntary euthanasia is conducted where an individual makes a decision for another person incapable of doing so. The decision can be made based on what the incapacitated individual would have wanted, or it could be made on substituted judgment of what the decision maker would want were he or she in the incapacitated person's place, or finally, the decision could be made by assessing objectively whether euthanasia is the most beneficial course of treatment. In any case, euthanasia by proxy consent is highly controversial, especially because multiple proxies may claim the
authority to decide for the patient and may or may not have explicit consent from the patient to make that decision.\textsuperscript{173}

**(b) Euthanasia by means**

Euthanasia may be conducted passively, non-aggressively, and aggressively. Passive euthanasia entails the withholding of common treatments (such as antibiotics, pain medications, or surgery) or the distribution of a medication (such as morphine) to relieve pain, knowing that it may also result in death (principle of double effect). Passive euthanasia is the most accepted form, and it is a common practice in most hospitals. Non-aggressive euthanasia entails the withdrawing of life support and is more controversial. Aggressive euthanasia entails the use of lethal substances or forces to kill and is the most controversial means.

**(c) Other designations**

Some important designations of euthanasia consist of mercy killing and animal euthanasia. The Canadian Council of Animal Care (CCAC) states that euthanasia is "to kill an animal painlessly, and without distress."\textsuperscript{6} The CCAC further explains a physical euthanasia technique called Cervical dislocation and a secondary technique called Exsanguination.\textsuperscript{174}

**Historical Background**

The term euthanasia comes from the Greek words "eu"-meaning good and "thanatos"-meaning death, which combined means "well-death" or "dying well". Hippocrates mentions euthanasia in the Hippocratic Oath, which was written between 400 and 300 B.C. The original Oath states: "To please no one will I prescribe a deadly drug nor give advice which may cause his death."\textsuperscript{175} Despite this, the ancient Greeks and Romans generally did not believe that life needed to be preserved at any cost and were, in consequence, tolerant of suicide in cases where no relief could be offered to the dying or, in the case of the Stoics and Epicureans, where a person no longer cared for his life.\textsuperscript{176}
English Common Law from the 1300s until the middle of the last century made suicide a criminal act in England and Wales. Assisting others to kill themselves remains illegal in that jurisdiction. However, in the 1500s, Thomas More, in describing a utopian community, envisaged such a community as one that would facilitate the death of those whose lives had become burdensome as a result of "torturing and lingering pain".\textsuperscript{177}

- **Modern history**

Since the 19th Century, euthanasia has sparked intermittent debates and activism in North America and Europe. According to medical historian Ezekiel Emanuel, it was the availability of anesthesia that ushered in the modern era of euthanasia. In 1828, the first known anti-euthanasia law in the United States was passed in the state of New York, with many other localities and states following suit over a period of several years.\textsuperscript{178} After the Civil War, voluntary euthanasia was promoted by advocates, including some doctors.\textsuperscript{179} Support peaked around the turn of the century in the U.S. and then grew again in the 1930s.

The first major effort to legalize euthanasia in the United States arose as part of the eugenics movement in the early years of the twentieth century. In an Article in the Bulletin of the History of Medicine, Brown University historian Jacob M. Appel documented extensive political debate over legislation to legalize physician-assisted suicide in both Iowa and Ohio in 1906.\textsuperscript{12} Appel indicates social activist Anna S. Hall was the driving force behind this movement.\textsuperscript{180} In his book A Merciful End, in Dowbiggen has revealed the role that leading public figures, including Clarence Darrow and Jack London, played in advocating for the legalization of euthanasia.\textsuperscript{181}

Euthanasia societies were formed in England in 1935 and in the U.S.A. in 1938 to promote aggressive euthanasia. Although euthanasia legislation did not pass in the U.S. or England, in 1937, doctor-assisted euthanasia was declared legal in Switzerland as long as the person ending the life has nothing to gain.\textsuperscript{182} During this period, euthanasia proposals were sometimes mixed with
eigenics. While some proponents focused on voluntary euthanasia for the terminally ill, others expressed interest in involuntary euthanasia for certain eugenic motivations (e.g., mentally "defective"). During this same era, meanwhile, U.S. Court trials tackled cases involving critically ill people who requested physician assistance in dying as well as "mercy killings", such as by parents of their severely disabled children.

Prior to and during World War II, the Nazis carried out an involuntary euthanasia program, largely in secret. In 1939, Nazis, in what was code-named Action T4, killed children under three who exhibited mental retardation, physical deformity or other debilitating problems which they considered gave the disabled child "life unworthy of life". This program was later extended to include older children and adults. Inmates of mental asylums in Germany and Austria would be transported to an intermediate facility, from where they would be retransported to one of six killing centres at Brandenburg near Berlin (January 1940 - September 1940), Grafeneck near Stuttgart (January 1940 - December 1940), Hartheim near Linz in Austria (January 1940 - December 1944), Sonnenstein/Pirna near Dresden (April 1940 - August 1943), Bemburg near Magdeburg (September 1940 - April 1943), Hadamar near Koblenz (January 1941 - August 1941). Religious protest especially but not limited to Catholic prelates caused Hitler to order the official cancellation of T4 but postwar investigation made it clear that the practice continued in institutes where personnel were sympathetic to eugenic policies.

The T4 program of the Nazis was extended to killing of concentration camp inmates when Philipp Bouhler, the head of the T4 program, allowed Heinrich Himmler to utilize T4 doctors, staff and facilities to kill concentration camp prisoners who were "most seriously ill" in a program designated "14f13".

- Post-War history

Due to outrage over Nazi euthanasia, in the 1940s and 1950s there was very little public support for euthanasia, especially for any involuntary, eugenics-based proposals. Catholic church leaders, among others, continued speaking
against euthanasia as a violation of the sanctity of life. (Nevertheless, owing to its principle of double effect, Roman Catholic moral theology did leave room for shortening life with pain-killers and what could be characterized as passive euthanasia.\textsuperscript{187} On the other hand, judges were often lenient in mercy-killing cases.\textsuperscript{188} During this period, prominent proponents of euthanasia included Glanville Williams (The Sanctity of Life and the Criminal Law) and clergyman Joseph Fletcher ("Morals and medicine"). By the 1960s, advocacy for a right-to-die approach to voluntary euthanasia increased.

A key turning point in the debate over voluntary euthanasia (and physician assisted dying), at least in the United States, was the public furor over the case of Karen Ann Quinlan. The Quinlan case paved the way for legal protection of voluntary passive euthanasia.\textsuperscript{189} In 1977, California legalized living wills and other states soon followed suit.

In 1990, Dr. Jack Kevorkian, a Michigan physician, became infamous for encouraging and assisting people in committing suicide which resulted in a Michigan law against the practice in 1992. Kevorkian was tried and convicted in 1999 for a murder displayed on television. Also in 1990, the Supreme Court approved the use of non-aggressive euthanasia.\textsuperscript{190}

In 1994, Oregon voters approved the Death with Dignity Act, permitting doctors to assist terminal patients with six months or less to live to end their lives. The U.S. Supreme Court allowed such laws in 1997. The Bush administration failed in its attempt to use drug law to stop Oregon in 2001, in the case, non-aggressive euthanasia was permitted in Texas.

In 1993, the Netherlands decriminalized doctor-assisted suicide, and in 2002, restrictions were loosened. During that year, physician-assisted suicide was approved in Belgium. Belgium's at the time most famous author Hugo Claus, suffering from Alzheimer's disease, was among those that asked for euthanasia. He died in March 2008, assisted by an Antwerp doctor. Australia's Northern Territory approved a euthanasia bill in 1995\textsuperscript{192}, but that was overturned by Australia's Federal Parliament in 1997.
Most recently, amid U.S. government roadblocks and controversy, Terri Schiavo, a Floridian who was in a vegetative state since 1990, had her feeding tube removed in 2005. Her husband had won the right to take her off life support, which he claimed she would want but was difficult to confirm as she had no living will and the rest of her family claimed otherwise.

**Arguments for and against voluntary euthanasia**

Since World War II, the debate over euthanasia in Western countries has centered on voluntary euthanasia (VE) within regulated health care systems. In some cases, judicial decisions, legislation, and regulations have made VE an explicit option for patients and their guardians. Proponents and critics of such VE policies offer the following reasons for and against official voluntary euthanasia policies:

(a) **Reasons given for voluntary euthanasia:**

- **Choice:** Proponents of VE emphasize that choice is a fundamental principle for liberal democracies and free market systems.

- **Quality of Life:** The pain and suffering a person feels during a disease, even with pain relievers, can be incomprehensible to a person who has not gone through it. Even without considering the physical pain, it is often difficult for patients to overcome the emotional pain of losing their independence. Moreover, despite modern painkillers, there is little available to deal with the problem of 'breathlessness', which makes many ailing patients feel they will suffocate.

- **Economic costs and human resources:** Today in many countries there is a shortage of hospital space. The energy of doctors and hospital beds could be used for people whose lives could be saved instead of continuing the life of those who want to die which increases the general quality of care and shortens hospital waiting
lists. It is a burden to keep people alive past the point they can contribute to society, especially if the resources used could be spent on a curable ailment.\textsuperscript{195}

(b) Reasons given against voluntary euthanasia:

- **Professional role:** Critics argue that voluntary euthanasia could unduly compromise the professional roles of health care employees, especially doctors. They point out that European physicians of previous centuries traditionally swore some variation of the Hippocratic Oath, which in its ancient form excluded euthanasia: "To please no one will I prescribe a deadly drug nor give advice which may cause his death..." However, since the 1970s, this oath has largely fallen out of use.

- **Moral:** Some people consider euthanasia of some or all types to be morally unacceptable.\textsuperscript{5} This view usually treats euthanasia to be a type of murder and voluntary euthanasia as a type of suicide, the morality of which is the subject of active debate.

- **Theological:** Voluntary euthanasia has often been rejected as a violation of the sanctity of human life. Specifically, some Christians argue that human life ultimately belongs to God, so that humans should not be the ones to make the choice to end life. Orthodox Judaism takes basically the same approach, however, it is more open minded, and does, given certain circumstances, allow for euthanasia to be exercised under passive or non-aggressive means. Accordingly, some theologians and other religious thinkers consider voluntary euthanasia (and suicide generally) as sinful acts, i.e. unjustified killings.\textsuperscript{196}

- **Feasibility of implementation:** Euthanasia can only be considered "voluntary" if a patient is mentally competent to make the decision, i.e., has a rational understanding of options and consequences. Competence can be difficult to determine or even define.
• **Necessity:** If there is some reason to believe the cause of a patient’s illness or suffering is or will soon be curable, the correct action is sometimes considered to attempt to bring about a cure or engage in palliative care.

• **Wishes of Family:** Family members often desire to spend as much time with their loved ones as possible before they die.

• **Consent under pressure:** Given the economic grounds for voluntary euthanasia (VE), critics of VE are concerned that patients may experience psychological pressure to consent to voluntary euthanasia rather than be a financial burden on their families. \(^{197}\) Even where health costs are mostly covered by public money, as in various European countries, VE critics are concerned that hospital personnel would have an economic incentive to advise or pressure people toward euthanasia consent. \(^{198}\)

### Euthanasia and religion

**(a) Catholic teaching**

Catholic teaching condemns euthanasia as a "crime against life". \(^{199}\) The teaching of the Catholic Church on euthanasia rests on several core principles of Catholic ethics, including the sanctity of human life, the dignity of the human person, concomitant human rights, due proportionality in casuistic remedies, the unavoidability of death, and the importance of charity. \(^{200}\) The Church's official position is the 1980 Declaration on Euthanasia issued by the Sacred Congregation for the Doctrine of the Faith. \(^{200}\)

In Catholic medical ethics official pronouncements strongly oppose active euthanasia, whether voluntary or not \(^{201}\), while allowing dying to proceed without medical interventions that would be considered "extraordinary" or "disproportionate." The Declaration on Euthanasia states that:

"When inevitable death is imminent..., it is permitted in conscience to take the decision to refuse forms of treatment that would only secure a
precarious and burdensome prolongation of life, so long as the normal care due to a sick person in similar cases is not interrupted.

The Declaration concludes that doctors, beyond providing medical skill, must above all provide patients "with the comfort of boundless kindness and heartfelt charity".

Although the Declaration allows people to decline heroic medical treatment when death is imminently inevitable, it unequivocally prohibits the hastening of death and restates Vatican II's condemnation of "crimes against life 'such as any type of murder, genocide, abortion, euthanasia, or willful suicide".

(b) Protestant policies

Protestant denominations vary widely on their approach to euthanasia and physician assisted death. Since the 1970s,

Evangelical churches have worked with Roman Catholics on a sanctity of life approach, though the Evangelicals may be adopting a more exceptionless opposition. While liberal Protestant denominations have largely eschewed euthanasia, many individual advocates (e.g., Joseph Fletcher) and euthanasia society activists have been Protestant clergy and laity. As physician assisted dying has obtained greater legal support, some liberal Protestant denominations have offered religious arguments and support for limited forms of euthanasia. People such as Lutherans are taught euthanasia is wrong and that it is God who has the right over life and death [citation needed]

(c) Jewish policies

Like the trend among Protestants, Jewish medical ethics have become divided, partly on denominational lines, over euthanasia and end of life treatment since the 1970s. Generally, Jewish thinkers oppose voluntary euthanasia, often vigorously, though there is some backing for voluntary passive euthanasia in limited circumstances. Likewise, within the Conservative Judaism movement, there has been increasing support for passive euthanasia (PAD) In Reform
Judaism responsa, the preponderance of anti-euthanasia sentiment has shifted in recent years to increasing support for certain passive euthanasia (PAD) options.

(d) Islamic policies

Islam categorically forbids all forms of suicide and any action that may help another to kill themselves.\textsuperscript{205, 206} It is forbidden for a Muslim to plan, or come to know through self-will, the time of his own death in advance\textsuperscript{207}. All this is stated, for example, in Fredrick Forsyth's novel, The Afghan. In fact, a Muslim who commits suicide is not even given burial rights. The precedent for all of this thinking comes from the Islamic prophet Muhammad having absolutely refused to bless the body of a person who had committed suicide. If an individual is suffering from a terminal illness, it is permissible for the individual to refuse medication and/or resuscitation. Other examples include individuals suffering from kidney failure - who refuse dialysis treatments and cancer patients who refuse chemotherapy.

(e) Buddhism

There are many different views among Buddhists on the issue of euthanasia. Here are a few:

In Theravada Buddhism a lay person daily recites the simple formula: "I undertake the precept to abstain from destroying living beings."\textsuperscript{208} For Buddhist monastics (bhikkhu) however the rules are more explicitly spelled out. For example, in the monastic code (Patimokkha), it states:

"Should any bhikkhu intentionally deprive a human being of life, or search for an assassin for him, or praise the advantages of death, or incite him to die (thus): 'My good man, what use is this wretched, miserable life to you? Death would be better for you than life,' or with such an idea in mind, such a purpose in mind, should in various ways praise the advantages of death or incite him to die, he also is defeated and no longer in communion."\textsuperscript{209}
In other words, such a monk or nun would be expelled irrevocably from the Buddhist monastic community (sangha).\textsuperscript{210} The prohibition against assisting another in their death includes circumstances when a monastic is caring for the terminally ill and extends to a prohibition against a monastic's purposively hastening another's death through word, action or treatment.

American Buddhist monk Thanissaro Bhikkhu wrote:

Thus, from the Buddha's perspective, encouraging a sick person to relax her grip on life or to give up the will to live would not count as an act of compassion. Instead of trying to ease the patient's transition to death, the Buddha focused on easing his or her insight into suffering and its end.\textsuperscript{211}

Dalai Lama was cited by the Agence-France Presse in a 18 September 1996 Article entitled "Dalai Lama Backs Euthanasia in Exceptional Circumstances" regarding his position on legal euthanasia:

Asked his view on euthanasia, the Dalai Lama said Buddhists believed every life was precious and none more so than human life, adding: 'I think it's better to avoid it.'

'But at the same time I think with abortion, (which) Buddhism considers an act of killing ... the Buddhist way is to judge the right and wrong or the pros and cons.'

He cited the case of a person in a coma with no possibility of recovery or a woman whose pregnancy threatened her life or that of the child or both where the harm caused by not taking action might be greater.

"These are, I think from the Buddhist viewpoint, exceptional cases," he said. "So it's best to be judged on a case by case basis."

(f) **Hindu Policies**

Hindu views of euthanasia and physician-assisted suicide vary, but they are all rooted in concerns about karma, reincarnation, and ahimsa (non-violence).
Suicide in Hindu History

The most well-known historical practice of suicide associated with Hinduism is that of suttee (Sanskrit sati), the self-immolation (burning to death) of a widow on her deceased husband's funeral pyre. In the Hindu epic Mahabarata, some queens commit suttee.\textsuperscript{212}

According to the Encyclopedia Britannica, the custom of suttee probably had little to do with the religion of Hinduism; it was rather an ancient custom based on beliefs that a man needed companions in the afterlife. In the medieval period, the hardships suffered by widows may have contributed to the spread of the practice. In theory it was a voluntary practice, but there were instances of compulsion to suttee.

The practice of suttee was not universal throughout Hindu history. The first mention of it outside the Mahabarata is made by a 1st-century BC Greek author writing about 4th-century BC Punjab. Tombstones commemorating women who died by suttee are numerous in India; the earliest is dated to 510 AD. Suttee was abolished in India in 1829, but it continued to occur for at least another 30 years.\textsuperscript{213}

Modern Hindu Views of Suicide and Euthanasia

As in Buddhism, Hindu views of euthanasia and suicide are grounded in the doctrines of karma, moksa, and ahimsa. Karma is the net consequence of good and bad deeds in a person's life, which then determines the nature of the next life. Ongoing accumulation of bad karma prevents moksa, or liberation from the cycle of rebirth, which is the ultimate goal of Hinduism. Ahimsa is a fundamental principle in Indian religions, and means doing harm to no other being.

Suicide is generally prohibited in Hinduism, on the basis that it disrupts the timing of the cycle of death and rebirth and therefore yields bad karma. According to one Hindu website, suicide is not approved in Hinduism because human life is a precious opportunity to attain higher states of rebirth that even the gods envy. It also has dire consequences for the soul's spiritual progress:
According to Hindu beliefs, if a person commits suicide, he neither goes to the hell nor the heaven, but remains in the earth consciousness as a bad spirit and wanders aimlessly till he completes his actual and allotted lifetime. Thereafter he goes to hell and suffers more severely. In the end he returns to the earth again to complete his previous karma and start from there once again. Suicide puts an individual's spiritual clock in reverse.\textsuperscript{214}

One exception to the Hindu prohibition of suicide is the practice of prayopavesa, or fasting to death. Prayopavesa is not regarded as suicide because it is natural and non-violent, and is acceptable only for spiritually advanced people under specified circumstances. BBC Religion & Ethics provides the following example of prayopavesa:

Satguru Sivaya Subramuniyaswami, a Hindu leader born in California, took his own life by prayopavesa in November 2001. After finding that he had untreatable intestinal cancer the Satguru meditated for several days and then announced that he would accept pain-killing treatment only and would undertake prayopavesa - taking water, but no food. He died on the 32nd day of his self-imposed fast.\textsuperscript{215}

Given the complex history of suicide in Indian thought and the various considerations outlined above, not all Hindus agree on whether euthanasia should be permitted. In the end, there are two Hindu views of euthanasia:

From one perspective, a person who helps other end a painful life and thereby reduce suffering is doing a good deed and will gain good karma. From the other perspective, euthanasia interrupts the timing of the cycle of rebirth and both the doctor and patient will take on bad karma as a result.\textsuperscript{216}

**Assisted Suicide Laws Around The World :-**

Assisted suicide laws around the world are clear in some nations but unclear - if they exist at all - in others. Just because a country has not defined its criminal code on this specific action does not mean all assisters will go free. It is a complicated state of affairs. Many people instinctively feel that suicide and assisted suicide are such individual acts of freedom and free will that they
assume there are no legal prohibitions. This fallacy has brought many people into trouble with the law. While suicide is no longer a crime - and where it is because of a failure to update the law it is not enforced - assistance remains a crime almost everywhere by some statute or other. I'll try to explain the hodgepodge.

For example, it is correct that Sweden has no law specifically proscribing assisted suicide. Instead the prosecutors might charge an assister with manslaughter - and do. In 1979 the Swedish right-to-die leader Berit Hedeby went to prison for a year for helping a man with MS to die. Neighbouring Norway has criminal sanctions against assisted suicide by using the charge "accessory to murder". In cases where consent was given and the reasons compassionate, the Courts pass lighter sentences. A recent law commission voted down de-criminalizing assisted suicide by a 5-2 vote.

A retired Norwegian physician, Christian Sandsdalen, was found guilty of wilful murder in 2000. He admitted giving an overdose of morphine to a woman chronically ill after 20 years with MS who begged for his help. It cost him his medical license but he was not sent to prison. He appealed the case right up to the Supreme Court and lost every time. Dr. Sandsdalen died at 82 and his funeral was packed with Norway's dignitaries, which is consistent with the support always given by intellectuals to euthanasia.

Finland has nothing in its criminal code about assisted suicide. Sometimes an assister will inform the law enforcement authorities of him or her of having aided someone in dying, and provided the action was justified, nothing more happens. Mostly it takes place among friends, who act discreetly. If Finnish doctors were known to practice assisted suicide or euthanasia, the situation might change, although there have been no known cases.

Germany has had no penalty for either suicide or assisted suicide since 1751, although it rarely happens there due to the hangover taboo caused by Nazi mass murders, plus powerful, contemporary, church influences. Direct killing by euthanasia is a crime. In 2000 a German appeal Court cleared a Swiss
clergyman of assisted suicide because there was no such offence, but convicted him of bringing the drugs into the country. There was no imprisonment.

France does not have a specific law banning assisted suicide, but such a case could be prosecuted under 223-6 of the Penal Code for failure to assist a person in danger. Convictions are rare and punishments minor. France bans all publications that advise on suicide - Final Exit has been banned since 1991 but few nowadays take any notice of the order. Since 1995 there has been a fierce debate on the subject, which may end in law reform eventually. Denmark has no specific law banning assisted suicide. In Italy the action is legally forbidden, although pro-euthanasia activists in Turin and Rome are pressing hard for law reform. Luxembourg does not forbid assistance in suicide because suicide itself is not a crime. Nevertheless, under 410-1 of its Penal Code a person could be penalized for failing to assist a person in danger. In March 2003 legislation to permit euthanasia was lost in the Luxembourg Parliament by a single vote.

Tolerance for euthanasia appears in the strangest of places. For instance, in Uruguay it seems a person must appear in Court, yet Article 27 of the Penal Code (effective 1934) says: "The judges are authorized to forego punishment of a person whose previous life has been honorable where he commits a homicide motivated by compassion, induced by repeated requests of the victim." So far as I can tell, there have been no judicial sentences for mercy killing in Uruguay.

In England and Wales there is a possibility of up to 14 years imprisonment for anybody assisting a suicide. Oddly, suicide itself is not a crime, having been decriminalized in 1961. Thus it is a crime to assist in a non-crime. In Britain, no case may be brought without the permission of the Director of Public Prosecutions in London, which rules out hasty, local police prosecutions. It has been a long, uphill fight for the British - there have been eight Bills or Amendments introduced into Parliament between 1936-2003, all trying to modify the law to allow careful, hastened death. None has succeeded, but the Joffe Bill currently before Parliament is getting more serious consideration than any
similar measure. As in France, there are laws banning a publication if it leads
to a suicide or assisted suicide. But Final Exit can be seen in bookstores in
both countries.

The law in Canada is almost the same as in England; indeed, a
prosecution has recently (2002) been brought in B.C. against a grandmother,
Evelyn Martens, for counselling and assisting the suicide of two dying people.
Mrs. Marten was acquitted on all counts in 2004. One significant difference
between English and Canadian law is that no case may be pursued by the police
without the approval of the Director of Public Prosecutions in London. This
clause keeps a brake on hasty police actions.

Assisted suicide is a crime in the Republic of Ireland. In 2003 police in
Dublin began proceedings against an American Unitarian minister, George D
Exoo, for allegedly assisting in the suicide of a woman who had mental health
problems. He responded that he had only been present to comfort the woman,
and read a few prayers. This threatened and much publicized case had
disappeared by 2005.

(a) Consent Irrelevant

Suicide has never been illegal under Scotland's laws. There is no Scots
authority of whether it is criminal to help another to commit suicide, and this
has never been tested in Court. The killing of another at his own request is
murder, as the consent of the victim is irrelevant in such a case. A person who
assists another to take their own life, whether by giving advice or by the provision
of the means of committing suicide, might be criminally liable on a number of
other grounds such as: recklessly endangering human life, culpable homicide
(recklessly giving advice or providing the means, followed by the death of the
victim), or wicked recklessness.

Hungary has one of the highest suicide rates in the world, caused mainly
by the difficulties the peasant population has had with adapting to city life.
Assistance in suicide or attempted suicide is punishable by up to five years
imprisonment. Euthanasia practiced by physicians was ruled as illegal by
Hungary's Constitutional Court (April 2003), eliciting this stinging comment from the journal Magyar Hirlap: "Has this theoretically hugely respectable body failed even to recognize that we should make legal what has become practice in everyday life." The journal predicted that the ruling would put doctors under commercial pressure to keep patients alive artificially.

Russia, too, has no tolerance of any form of assisted suicide, nor did it during the 60-year Soviet rule. The Russian legal system does not recognize the notion of 'mercy-killing'. Moreover, the 1993 law 'On Health Care of Russian Citizens' strictly prohibits the practice of euthanasia. A ray of commonsense can be seen in Estonia (after getting its freedom from the Soviet bloc) where lawmakers say that as suicide is not punishable the assistance in suicide is also not punishable.

The only four places that today openly and legally, authorize active assistance in dying of patients, are:

1. Oregon (since 1997, physician-assisted suicide only);
2. Switzerland (1941, physician and non-physician assisted suicide only);
3. Belgium (2002, permits 'euthanasia' but does not define the method);
4. Netherlands (voluntary euthanasia and physician-assisted suicide lawful since April 2002 but permitted by the Courts since 1984).

Two doctors must be involved in Oregon, Belgium, and the Netherlands, plus a psychologist if there are doubts about the patient's competency. But that is not stipulated in Switzerland, although at least one doctor usually is because the right-to-die societies insist on medical certification of a hopeless or terminal condition before handing out the lethal drugs.

The Netherlands permits voluntary euthanasia as well as physician-assisted suicide, while both Oregon and Switzerland bar death by injection.

Dutch law enforcement will crack down on any non-physician assisted suicide they find, recently sentencing an old man to six months imprisonment.
for helping a sick, old woman to die.

Switzerland alone does not bar foreigners, but careful watch is kept that the reasons for assisting are altruistic, as the law requires. In fact, only one of the four groups in that country, DIGNITAS, chooses to assist foreigners. When this willingness was published in newspapers worldwide, sick people from all over Europe, and occasionally America, started trekking to Switzerland to get a hastened death. In 2001 the Swiss National Council confirmed the assisted suicide law but kept the prohibition of voluntary euthanasia.

Belgian law speaks only of 'euthanasia' being available under certain conditions. 'Assisted suicide' appears to be a term that Belgians are not familiar with. It is left to negotiation between the doctor and patient as to whether death is by lethal injection or by prescribed overdose. The patient must be a resident of Belgium (pop.: 10 million), though not necessarily a citizen. In its first full year of implementation, 203 people received euthanasia from a doctor.

All three right-to-die organizations in Switzerland help terminally ill people to die by providing counselling and lethal drugs. Police are always informed. As we have said, only one group, DIGNITAS in Zurich, will accept foreigners who must be either terminal, or severely mentally ill, or clinically depressed beyond treatment. (Note: Dutch euthanasia law has caveats permitting assisted suicide for the mentally ill in rare and incurable cases, provided the person is competent.)

The Oregon Death With Dignity Act came under heavy pressure from the US Federal government in 2001 when Attorney General John Ashcroft issued a directive essentially and immediately gutting the law. This brought on a public outcry that the Federal government was nullifying a law twice voted on by Oregon citizens. A disqualification of democracy! An interference with states' rights! Immediately the state of Oregon went to Court (2002) to nullify the directive, won at the first stage, but the appeals are likely to continue until 2004. Since 1980, right-to-die groups have tried to change the laws in Washington State, California, Michigan, Maine, Hawaii, and Vermont, so far without success. Thus
In the USA, Oregon stands alone and under great pressure.

In 2005 the US Supreme Court agreed to the federal government's request for it to decide whether Oregon's law was Constitutional. The case concerned not so much the ethical correctness of physician-assisted suicide but turned legally on whether it was the federal government or the states which controlled dangerous drugs, as used by doctors in Oregon. The Court's decision, expected in early 2006, will affect pain control throughout America.

New Zealand forbids assistance under 179 of the New Zealand Crimes Act, 1961, but cases were rare and the penalties lenient. Then, out-of-the-blue in New Zealand in 2003 a writer, Lesley Martin, was charged with the assisted suicide of her mother that she had described in a book. Ms. Martin was convicted of manslaughter by using excessive morphine and served half of a fifteen-month prison sentence. She remained unrepentent. That same year the country's parliament voted 60-57 not to legalize a form of euthanasia similar to the Dutch model.

Similarly, Colombia's Constitutional Court in 1997 approved medical voluntary euthanasia but its parliament has never ratified it. So the ruling stays in limbo until a doctor challenges it. Assisted suicide remains a crime.

(b) Rare in Japan

Japan has medical voluntary euthanasia approved by a high Court in 1962 in the Yamagouchi case, but instances are extremely rare, seemingly because of complicated taboos on suicide, dying and death in that country, and a reluctance to accept the same individualism that Americans and Europeans enjoy. The Japan Society for Dying with Dignity is the largest right-to-die group in the world with more than 100,000 paid up members. Currently, the Society feels it wise to campaign only for passive euthanasia - good advance directives about terminal care, and no futile treatment. Voluntary euthanasia and assisted suicide are rarely talked about, which seems strange to Westerners who have heard so much about the culture of ritual suicide, hari kari, in Japanese history. This is because, one Society official explained: "In Japan, everything is
hierarchical, including academics, and government organization, and this makes it difficult for the medical staff and those who offer psychiatric care to join forces to treat the dying."

Another factor in Japan's backwardness on euthanasia is that some 80 percent of their people die in hospitals, compared to about 35 percent in the Netherlands, 35 percent in America, with as low as 25 percent in Oregon which has a physician-assisted suicide law. Euthanasia is essential an in-home action.

The right-to-die movement has been strong in Australia since the early 1970s, spurred by the vast distances in the outback country between patients and doctors. Families were obliged to care for their dying, experienced the many harrowing difficulties, and many became interested in euthanasia. The Northern Territory of Australia actually had legal voluntary euthanasia and assisted suicide for seven months until the Federal Parliament stepped in and repealed the law in 1997. Only four people were able to use it, all helped to die by the undaunted Dr. Philip Nitschke, who now runs the progressive organization, Exit International (formerly 'Final Exit Australia'). Other states have since attempted to change the law, most persistently South Australia, but so far unsuccessfully.

In a rare show of mercy and understanding, a judge in the Supreme Court of Victoria, Australia, in July 2003 sentenced a man to 18 months jail - but totally suspended the custody. Alex Maxwell had pleaded guilty to 'aiding and abetting' the suicide of his terminally ill wife, actions that the judge said were motivated by compassion, love, and humanity and thus did not deserve imprisonment. This was a trend in the right direction.

(c) Europe on the Move

The strongest indication that the Western world is moving gradually to allow assisted suicide for the dying and the incurable rather than to permitting voluntary euthanasia comes from a huge survey that the Council of Europe did in 2002. It received answers from 34 Central Asian and European states, plus the USA and Russia. Not a few replied that such terms were nowhere to be
seen in their laws so had difficulty answering.

Asked if legislation or rules made euthanasia possible, only one country (Netherlands) answered in the affirmative (Belgium had not yet passed its similar law) and 25 nations said definitely not. Asked if they had any professional codes of practice on assisted suicide, eight countries said that they did, while 21 said no.

Some of the other questions had revealing answers:

- Is the term 'assisted suicide' used in your country: Yes 18; No 5.
- Do criminal sanctions against assisted suicide exist: Yes 23; No 4.
- If so, have they ever been applied: Yes 6; No 6.

The Council of Europe, representing 45 nations, did not let the matter rest there. Its Social, Health and Family Affairs Committee approved a report which called on European states to consider decriminalizing euthanasia. This was a massive step forward for the previously ignored right-to-die movement.

The commonsense of the Committee's approach is shown in the draft report by Swiss Rapporteur Dick Marty:

1. Nobody has the right to impose on the terminally-ill and the dying the obligation to live out their life in unbearable suffering and anguish where they themselves have persistently expressed the wish to end it.

2. There is no implied obligation on any health worker to take part in an act of euthanasia, nor can such an act be interpreted as the expression of lesser consideration for human life.

3. Governments of Council of Europe member states are asked to collect and analyse empirical evidence about end-of-life decisions; to promote public discussion of such evidence; to promote comparative analysis of such evidence in the framework of the Council of Europe; and, in the light of such evidence and public
discussion, to consider whether enabling legislation authorising euthanasia should be envisaged.

(d) The position in other countries

In general countries attempt to draw a line between passive euthanasia (generally associated with allowing person to die) and active euthanasia (generally associated with killing a person). While laws commonly permit passive euthanasia, active euthanasia is generally prohibited.

(i) England

In England, following a series of decisions of the House of Lords it is now settled that a person has the right to refuse life-sustaining treatment as part of his rights of autonomy and self-determination. The House of Lords has also permitted non-voluntary euthanasia in case of patients in a persistent vegetative state. Moreover, in a recent decision, a British High Court has granted a woman paralysed from the neck, the right to die by having her life support system switched off.

(ii) United States of America

Laws in the United States maintain the distinction between passive and active euthanasia. While active euthanasia is prohibited, the Courts have ruled that physicians should not be legally punished if they withhold or withdraw a life-sustaining treatment at the request of a patient or the patient's authorised representative. These decisions are based on increasing acceptance of the doctrine that patients possess a right to refuse treatment as part of their right to self-determination.

Every U.S. State has adopted laws that authorise legally competent individuals to make advanced directives, often referred to as living wills. Such documents allowed individuals to control some features of the time and manner of their deaths. In particular, these directives, issued when a person is fit and fully capable of making a rational decision, empower and instruct doctors to withhold life-support systems if the individuals become terminally ill.
Furthermore, the federal Patient Self-Determination Act, which became effective in 1991, required federally certified health-care facilities to notify competent adult patients of their right to accept or refuse medical treatment. The facilities must also inform such patients of their rights under the applicable State law to formulate an advanced directive.

As of mid-1999, only one U.S. State, Oregon, had enacted a law allowing physicians to actively assist patients who wish to end their lives. However, Oregon's law concerns assisted suicide rather than active euthanasia. It authorised physicians to prescribe lethal amounts of medication that patients then administer themselves.

However, movements seeking to legalise assisted suicide and euthanasia in America have been dealt a death blow by the US Supreme Court decisions in Washington v. Glucksberg and Vacco v. Quill. Through these cases, State laws in New York and Washington which had banned physician assisted suicide have been held to be in consonance with the provisions of the Constitution, defeating arguments contending that the "right" to assistance in committing suicide was protected by the "Due Process" and "Equal Protection Clauses".

(iii) Canada

Patients in Canada have rights similar to those in the United States to refuse life-sustaining treatments and formulate advanced directives. However, they do not have the right to demand assisted suicide or active euthanasia. A majority of the Supreme Court of Canada held that a complete ban on assisted suicide was necessary and that the interests of the state in protecting its vulnerable citizens superseded the individual rights of a citizen who sought assisted suicide.

(iv) Netherlands

Under the Penal Code of Netherlands, killing a person at his request is punishable by imprisonment for a maximum of 12 years or by a fine and assisting a person to commit suicide is also punishable by imprisonment upto 3 years or fine.
In spite of the clear wordings of the Code, the Courts of Netherlands have come to interpret the law as providing defence to charges of voluntary euthanasia and assisted suicide. The defence allowed is that of necessity. The Dutch defence of necessity is of two types. The first is "psychological compulsion" while the second is "emergency". The latter applies when the accused chooses to break the law in order to promote a higher good. Both these types came to be allowed by the Supreme Court of Netherlands.  

The criteria laid down by the Courts to determine whether the defence of necessity applies in a given case of euthanasia, have been summarised by Mrs Borst-Eilers as follows:

1. The request for euthanasia must come only from the patient and must be entirely free and voluntary.
2. The patient's request must be well considered, durable and persistent.
3. The patient must be experiencing intolerable (not necessarily physical) suffering, with no prospect of improvement.
4. Euthanasia must be the last resort. Other alternatives to alleviate the patient's situation must be considered and found wanting.
5. Euthanasia must be performed by a physician.
6. The physician must consult with an independent physician colleague who has experience in this field.

Thus, though active euthanasia is technically unlawful in the Netherlands, it is considered justified (not legally punishable) if the physician follows the above guidelines.

In the wake of these judicial guidelines a Bill had been introduced in Netherlands's Parliament seeking to legalise euthanasia. Recently in April 2001, Netherlands charted out a new chapter in the history of legalising euthanasia when the Upper House of the country passed the Bill by a vote of 46-28. The
new law sets forth rules that will make a long-tolerated Dutch practice legal. It allows a doctor to end the life of a patient suffering "unbearable" pain from an incurable condition, if the patient so requests. The law requires a long-standing doctor-patient relationship, patient's awareness of other available medical options and that the patient must have obtained a second professional opinion. The law also allows people to leave written requests for euthanasia in the nature of "advance directives".220

(v) Australia

In 1996, the Northern Territory of Australia became the first jurisdiction to explicitly legalise voluntary active euthanasia when it passed the Rights of the Terminally II Act, 1996. Though the validity of the Act was upheld by the Supreme Court of Northern Territory in Wake v. Northern Territory of Australia221 a subsequent federal Constitutional challenge to the legislation had succeeded. The Federal Parliament of Australia had subsequently passed the Euthanasia Laws Act, 1997 repealing the Northern Territory legislation.222

Should Euthanasia be Legalised in India?

The word euthanasia is derived from the Greek word "euthanatos" meaning "well death" i.e. intentional mercy killing. In the modern context euthanasia is limited to the killing of patients by doctors at the request of the patient in order to free him of excruciating pain or from terminal illness. When medical advances made prolonging of the lives of dying or comatose patients possible, the term euthanasia was also applied to omission to prevent death.

Euthanasia may be classified as active and passive or alternatively as voluntary, non-voluntary and involuntary. Active euthanasia involves painlessly putting individuals to death for merciful reasons, as when a doctor administers a lethal dose of medication to a patient. Passive euthanasia involves not doing something to prevent death, as when doctors refrain from using devices necessary to keep alive a terminally ill patient or a patient in a persistent vegetative state. In voluntary euthanasia, a person asks for death (by either active or passive euthanasia). Non-voluntary euthanasia refers to ending the
life of a person who is not mentally competent, such as a comatose patient, to make an informed request for death. In addition there is another category of involuntary euthanasia. This is said to occur when a patient is killed against his express will.

It is important that euthanasia is not confused with assisted suicide. The latter involves a patient's voluntarily bringing about his or her own death with the assistance of another person, typically a physician. In this case, the act is a suicide (intentional self-inflicted death), because the patient actually causes his or her own death. Thus, while in assisted suicide the doctor makes available to the patient the means by which he can kill himself, in euthanasia the doctor himself (by act or omission) kills the patient. The issue of assisted suicide is closely related to that of euthanasia because it also involves questions of similar nature.

In 1935, Lord Moynihan and Dr Killick Millard founded the British Voluntary Euthanasia Society (later known as EXIT and now as Dignity in Dying) which produced A Guide To Self Deliverance giving guidelines on how a person should commit suicide. Publication was delayed amid controversy because of the Suicide Act of 1961 which states that the legal system can allow up to 14 years in prison for anyone that assists in a suicide. Therefore, it was unclear whether the Society could be held accountable for assisting in suicide because of its publication. In 1980, the Scottish branch (now called Exit) broke off from its original society in order to publish How to Die with Dignity which became the first publication of its kind in the world.

The first attempt to reform the law in England was in 1936 by Lord Arthur Ponsonby and supported by the Euthanasia Society. In 1969, a Bill was introduced into the House of Lords by Lord Raglan. In 1970, the House of Commons debated the issue. Baroness Wootton introduced a Bill to the Lords in 1976 on the matter of "passive euthanasia".

Between 2003 and 2006 Lord Joffe made four attempts to introduce bills that would have legalized assisted suicide and voluntary euthanasia - all were
rejected by Parliament.\textsuperscript{226}

In June of 2012, the British Medical Journal published an editorial arguing that medical organisations like the British Medical Association ought to drop their opposition to assisted dying and take a neutral stance so as to enable Parliament to debate the issue and not have what Raymond Tallis described as a "disproportionate influence on the decision".\textsuperscript{227}

Euthanasia is illegal in all states of the United States. Physician aid in dying in the most of state of United States. Euthanasia entails the physician or another third party administering the medication. For example, the state of Washington voters saw Ballot Initiative 119 in 1991, the state of California placed Proposition 161 on the ballot in 1992, Oregon voters passed Measure 16 (Death with Dignity Act) in 1994, the state of Michigan included Proposal B in their ballot in 1998, and Washington's Initiative 1000 passed in 2008. Vermont's state legislature passed a bill making PAD legal in May 2013. However, on May 31, 2013, Maine rejected a similar bill within its state legislature.

Debates about the ethics of euthanasia and physician-assisted suicide date from ancient Greece and Rome. After the development of ether, physicians began advocating the use of anesthetics to relieve the pain of death. In 1870, Samuel Williams first proposed using anesthetics and morphine to intentionally end a patient's life. Over the next 35 years, debates about the euthanasia raged in the United States which resulted in an Ohio bill to legalize euthanasia in 1906, a bill that was ultimately defeated.\textsuperscript{228}

Euthanasia advocacy in the U.S. peaked again during the 1930s and diminished significantly during and after World War II. Euthanasia efforts were revived during the 1960s and 1970s, under the right-to-die rubric, physician assisted death in liberal bioethics, and through advance directives and do not resuscitate orders.

In the case of Barber v. Superior Court, two physicians had honored a family's request to withdraw both respirator and intravenous feeding and hydration tubes from a comatose patient. The physicians were charged with
murder, despite the fact that they were doing what the family wanted. The Court held that all charges should be dropped because the treatments had all been ineffective and burdensome. Withdrawal of treatment, even if life-ending, is morally and legally permitted. Competent patients or their surrogates can decide to withdraw treatments, usually after the treatments are found ineffective, painful, or burdensome.\textsuperscript{229}

Thus the United States legal and ethical debates about euthanasia became more prominent in the case of Karen Ann Quinlan who went into a coma after allegedly mixing tranquilizers with alcohol, surviving biologically for 9 years in a "persistent vegetative state" even after the New Jersey Supreme Court approval to remove her from a respirator. This case caused a widespread public concern about "lives not worth living" and the possibility of at least voluntary euthanasia if it could be ascertained that the patient would not have wanted to live in this condition.\textsuperscript{230}

In 1999, The State of Texas passed the Advance Directives Act. Under the law, in some situations, Texas hospitals and physicians have the right to withdraw life support measures, such as mechanical respiration, from terminally ill patients when such treatment is considered to be both futile and inappropriate. This is sometimes referred to as "passive euthanasia".

(i) The current legal position on euthanasia and assisted suicide in India

In India, euthanasia is undoubtedly illegal. Since in cases of euthanasia or mercy killing there is an intention on the part of the doctor to kill the patient, such cases would clearly fall under clause first of Section 300 of the Indian Penal Code, 1860. However, as in such cases there is the valid consent of the deceased Exception 5 to the said Section would be attracted and the doctor or mercy killer would be punishable under Section 304 for culpable homicide not amounting to murder. But it is only cases of voluntary euthanasia (where the patient consents to death) that would attract Exception 5 to Section 300. Cases of non-voluntary and involuntary euthanasia would be struck by proviso one to
Section 92 of the IPC and thus be rendered illegal. Euthanasia and suicide are different, distinguishing euthanasia from suicide, Lodha J. in Naresh Marotrac Sakhre v. Union of India 231, observed:

"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. Euthanasia or mercy killing on the other hand means and implies the intervention of other human agency to end the life. Mercy killing thus is not suicide and an attempt at mercy killing is not covered by the provisions of Section 309. The two concepts are both factually and legally distinct. Euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is effected."232

The law in India is also very clear on the aspect of assisted suicide. Abetment of suicide is an offence expressly punishable under Sections 305 and 306 of the IPC.

Moreover, after the decision of a five judge bench of the Supreme Court in Gian Kaur v. State of Punjab233 it is well settled that the "right to life" guaranteed by Article 21 of the Constitution does not include the "right to die". The Cowl held that Article 21 is a provision guaranteeing "protection of life and personal liberty" and by no stretch of the imagination can extinction of life be read into it.

(ii) Arguments for legalising euthanasia

It is not possible in this paper to describe in detail the arguments in favour and against of euthanasia but for the purpose of illustration some arguments are given.

Supporters of euthanasia argue that society is obligated to acknowledge the rights of patients and to respect the decisions of those who elect euthanasia. It is argued that euthanasia respects the individual's right to self- determination or his right of privacy. Interference with that right can only be justified if it is to protect essential social values, which is not the case where patients suffering unbearably at the end of their lives request euthanasia when no alternatives
exist. Not allowing euthanasia would come down to forcing people to suffer against their will, which would be cruel and a negation of their human rights and dignity.

Every person has a right to live with at least a minimum dignity and when the state of his existence falls below even that minimum level then he must be allowed to end such tortuous existence. In such cases relief from suffering (rather than preserving life) should be the primary objective of health-care providers.

It is said that since society has acknowledged a patient’s right to passive euthanasia (for example, by legally recognising refusal of life-sustaining treatment), active euthanasia should similarly be permitted. When arguing on behalf of legalising active euthanasia, proponents emphasise circumstances in which a condition has become overwhelmingly burdensome for the patient, pain management for the patient is inadequate, and only death seems capable of bringing relief. Moreover, in light of the increasing pressure on hospital and medical facilities, it is argued that the same facilities should be used for the benefit of other patients who have a better chance of recovery and to whom the said facilities would be of greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved, the latter should be preferred as the former will die in any case.

(iii) **Arguments against legalising euthanasia**

Opponents of euthanasia treat it as a euphemism for murder and maintain that euthanasia is not the right to die but the right to kill. It is said that healthcare providers have professional obligations that prohibit killing and maintain that euthanasia is inconsistent with the roles of nursing, caregiving, and healing. Instead with the rapidly advancing medical science it is very much possible that those ill today may be cured tomorrow. Hence, the society has no right to kill them today and thereby deny them the chance of future recovery.

Further, it is not always that the patient wants to die. The relatives of the patient are also allowed to decide whether to let the patient live. In addition, even where the consent is that of the patient it may be one obtained by force.
Use of physical force here is highly unlikely. But emotional and psychological pressures could become overpowering for depressed or dependent people. If the choice of euthanasia is considered as good as a decision to receive care, many people will feel guilty for not choosing death. Moreover, financial considerations, added to the concern about "being a burden," could serve as a powerful force that would lead a person to "choose" euthanasia or assisted suicide.

Moreover, it is argued that when a healthy person is not allowed to commit suicide then why should a diseased person be allowed to do so. It is pointed out that suicide in a person who has been diagnosed with a terminal illness is no different than suicide for someone who is not considered terminally ill. Depression, family conflict, feelings of abandonment, hopelessness, etc. lead to suicide - regardless of one's physical condition. Studies have shown that if pain and depression are adequately treated in a dying person - as they would be in a suicidal non-dying person - the desire to commit suicide evaporates. Suicide among the terminally ill, like suicide among the population in general, is a tragic event that cuts short the life of the victim and leaves survivors devastated.

Another favourite argument is that of the "slippery slope". The slippery slope argument, in short, is that permitting voluntary euthanasia would over the years lead to a slide down the slippery slope and eventually we would end up permitting even non-voluntary and involuntary euthanasia.

Opponents also argue that permitting physicians to engage in active euthanasia creates intolerable risks of abuse and misuse of the power over life and death. They acknowledge that particular instances of active euthanasia may sometimes be morally justified. However, they maintain that sanctioning the practice of killing would, on balance, cause more harm than benefit.

(iv) Setting the debate

A close perusal of the arguments against euthanasia that have been summarised above tends to indicate that all the talk about sanctity of life
notwithstanding, the opposition to euthanasia breeds from the fear of misuse of the right if it is permitted. It is feared that placing the discretion in the hands of the doctor would be placing too much power in his hands and he may misuse such power. This fear stems largely from the fact that the discretionary power is placed in the hands of non-judicial personnel (a doctor in this case). This is so because we do not shirk from placing the same kind of power in the hands of a judge (for example, when we give the judge the power to decide whether to award a death sentence or a sentence of imprisonment for life). But what is surprising is that the fear is of the very person (the doctor) in who's hands we would otherwise not be afraid of placing our lives. A doctor with a scalpel in his hands is acceptable but not a doctor with a fatal injection. What is even more surprising is that ordinarily the law does not readily accept negligence on the part of a doctor. The Courts tread with great caution when examining the decision of a doctor and yet his decision in the cases of euthanasia is not considered reliable.

It is felt that a terminally ill patient who suffers from unbearable pain should be allowed to die. Indeed, spending valuable time, money, and facilities on a person who has neither the desire nor the hope of recovery is nothing but a waste of the same. At this juncture it would not be out of place to mention that the "liberty to die", if not right strictu sensu, may be read as part of the right to life guaranteed by Article 21 of the Constitution of India. True that the Supreme Court has held that such an interpretation of Article 21 is incorrect, but it is submitted that one may try to read the "freedom to die" as flowing from the rights of privacy, autonomy and self-determination, which is what has been done by the Courts of United State and England (refer to the Section dealing with position of euthanasia in other countries). Since the said rights in turn have been held to be included within the ambit of Article 21, the "freedom to die" too would logically be covered by Article 21. This argument is put forward as a possible solution since such questions were not put before the Apex Court in Gian Kaur case.

Aruna Shanbaug was a nurse working at the KEM Hospital in Mumbai on
27 November 1973 when she was strangled and sodomized by Sohanlal Walmiki, a sweeper. During the attack she was strangled with a chain, and the deprivation of oxygen has left her in a vegetative state ever since. She has been treated at KEM since the incident and is kept alive by feeding tube. On behalf of Aruna, her friend Pinki Virani, a social activist, filed a petition in the Supreme Court arguing that the "continued existence of Aruna is in violation of her right to live in dignity". The Supreme Court made its decision on 7 March 2011. The Court rejected the plea to discontinue Aruna's life support but issued a set of broad guidelines legalising passive euthanasia in India. The Supreme Court's decision to reject the discontinuation of Aruna's life support was based on the fact that the hospital staff who treat and take care of her did not support euthanizing her.

Passive euthanasia is legal in India. On 7 March 2011 the Supreme Court of India legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who has been in a vegetative state for 37 years at King Edward Memorial Hospital. The high Court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the Court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law. Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries.

The jurisprudential import of a right to die is likely to be very far-reaching. Is the right to die a fundamental right or merely a "liberty interest"? Would the right create correlative duties on the State, the community or the family? How would the conflicts between this right and other rights be reconciled?

Some of the aforesaid jurisprudential issues have come to light already in the context of the American debates on Euthanasia and the Court decisions in Nancy Cruzan case and in Wanglie, Re. The case of Nancy Cruzan is an eye- opener for all those who have imagined an easy journey for a right to die. Nancy Cruzan was in a persistent vegetative state, a condition in which a person
exhibits motor reflexes but evinces no indications of significant cognitive functions, for a prolonged period. The U.S. Supreme Court held that the parent's request to withdraw artificial life saving devices can be complied with only if there is a clear and convincing evidence of the person's wish to die. Since there was enough compliance with the clear and convincing evidence standard in Cruzan case, the devices were removed and Nancy Cruzan died peacefully some ten days later. However, the Supreme Court only conceded a Constitutionally protected "liberty-interest" in refusing unwanted medical treatment. The majority was careful not to suggest that competent patients have a fundamental right to refuse treatment. For, if they did so, the fundamental right would have to be protected unless the State interest was shown to be compelling.

In the context of recognition of a right to die an additional argument can be: Even if the individual's interest in terminating his life according to his wish is considered as well deserved and worthy of recognition, can it be accorded priority over many other 'more' deserving interests? We have still not been able to recognise a right to basic necessities of life like food, shelter, clothing, medical care and even pure drinking water. Nor, despite a lot of fanfare from time to time, has the society been able to recognise the right to employment so far. Are the interest of basic necessities of life and the most acceptable way of securing them through work and industry less deserving than the right to die, whose recognition could easily wait till at least some of the more deserving interests received recognition? Furthermore, if for recognising a right to free primary education that affects almost forty per cent of the country's population, the Nation could patiently wait for forty-three years, what was the urgency in recognising the interest in dying, that at best, affects only a few? It may be argued that recognising other interests, like basic necessities, requires positive State action, while right to die does not in any way require any kind of positive action on the part of the State. Certain fallacies in the aforesaid argument can be pointed out: First, the non-interference or the negative perception of a right is only partly true, because in case of several rights like right to a road in a hilly
rural area or right to free primary education a positive State action, be it in the form of planning and allocation of funds for roads or primary schools, is imperative for concrete realization of the rights. This is also in consonance with the notion of Welfare State. Second, recognition of a right to die may also have negative implications for the State, in as much as the State may be obliged to deploy resources to counter the breach of peace and social alarm associated with the exercise of the right to die. We should not forget that in a country like India where there is tremendous pressure in the available medical facilities, euthanasia is all the more necessary for the maximum utilisation of the limited facilities.

In the end, we also do well to remember the following words of Mahatma Gandhi:

“Death is our friend, the truest friends. It delivers us from agony. I do not want to die of a creeping paralysis of my faculties - a defeated man.”

**Right to Life or Death? : For India Both Cannot be 'Right'**

For the moralist, the policy maker, the doctor and the judge, the question of life or death invariably poses a dilemma that belies easy resolution. The roots of such a dilemma lie in the very nature of human existence that begins with life and ends with death. That is why at the mundane or the ordinary-man level of existence, life is good or desirable as represented by Shiv and death is bad or undesirable as represented by Shav. The first is auspicious (shubh) and a symbol of eternal life, while the second is inauspicious (ashubh) for it heralds decay and decomposition. However, it would be in fairness and more scientific to recognise certain unusual psychological states, born out of depression or desperation and under heightened spiritual and poetic experience, when the sharp lines of distinction between Shiv and Shav may loose much of their ordinary meaning.

The recent Supreme Court decision in Rathinam/Nagbhusan Patnaik v. Union of India has not only grappled with a similar life or death dilemma, but has also given solutions that are likely to produce far-reaching consequences for individual-State relationship. The matter came before the Supreme Court by way of two criminal petitions assailing the Constitutionality of Section 309 of
the Indian Penal Code and also seeking the quashing of the penal proceedings instituted under Section 309 respectively. The Supreme Court at the outset appreciated the intensely controversial nature of the issue at hand by referring to the three views on the matter taken by the High Courts of Delhi, Bombay and Andhra Pradesh. The Supreme Court in a leading judgment took several new strides not only in respect of the legal finding but also in matters of style of writing a judgment, reference to the indigenous research and writings on the relevant subject and the techniques of law reform through judicial action, etc.

The decision is being presently commented upon in respect of the following main aspects:

(i) De-criminalising attempt to commit suicide.

(ii) Recognising a Fundamental Right to die.

(iii) Alternative judicial responses.

(i) De-criminalising attempt to commit suicide

On the issue of de-criminalisation of attempt to commit suicide offence the Rathinam case is refreshingly forthright and categorical. Justice Hansaria's following observation brings home the point forcefully:

"Section 309 of the Penal Code deserves to be effaced from the statute book to humanise our penal laws. It is 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."  

For arriving at a conclusion that Section 309 is outdated, irrational and cruel the Court seems to have heavily relied upon the Forty-Second Report of the Law Commission of India which had in the early seventies itself recommended the deletion of the offence of attempt to commit suicide from the Penal Code. The lead given by the Law Commission was admirably carried forward by the Delhi High Court, which through its two decisions by Chief Justice Rajinder Sachar in State v. Sanjay Kumar Bhatia and Court on its own motion v. Yogesh Sharma provided the strongest ideological offensive against the
outmoded offence. In Yogesh Sharma cases Justice Sachar took the new ideology to its logical conclusion by quashing, in a feat of rare judicial creativity, all the pending 119 attempted suicide cases in Delhi, in the exercise of inherent power under Section 482 Code of Criminal Procedure.

The Rathinam case deployed a distinctive academic style for arriving at the de-criminalisation conclusion. It exploded the century old religious, moral and social justifications of the attempted suicide offence by elaborately demolishing all the arguments one by one in the laboriously worked-out over twelve paras (paras 50 to 62). Finally, the Court successfully established that a majority of suicides are product of personality disorganisation that can be more scientifically dealt with through psychiatric intervention and not by adopting punitive approach.

One can hardly disagree with the Supreme Court's view regarding the futility of criminalising attempt to commit suicide and in this sense the Court's ruling is most welcome and timely. The most desirable fall out of such a finding would be that the frustrated and psychologically traumatised suicide-seeker would not only be spared of the most unkind social stigma but would also be in a better position to freely and fearlessly seek medical and psychiatric treatment. This will, it is hoped, lead to a better and more socially acceptable way of dealing with a problem that can hardly be dealt with through law. However, while discussing the desirable consequences of de-criminalisation one should also keep in mind certain implications that would required additional action. The first relates to the offence of abetment of suicide and many other forms of third party intervention situations related with suicide. In this respect the Supreme Court has very categorically laid down that "As regards person aiding and abetting suicide the law can be entirely different ... as self-killing is conceptually different from abetting others to kill themselves." The second implication would be that in all cases of aided or instigated suicide there would be a tendency to prove that the aid or instigation was at the instance of the person concerned. This might have special relevance in case of Sati where often under social
pressure the victim will be compelled to testify that she volunteered to die.\textsuperscript{251} The third implication relates to instances of self-immolation and fast-unto-death undertaken in public places. It may be true that in the interest of public order the police may be justified in taking action under the Criminal Procedure Code or the Police Act, but unless the law is specifically amended, at times, hard situations are likely to arise.\textsuperscript{252} Similarly, attempted suicide by a life convict even in a private place is likely to undermine the credibility of the criminal justice administration itself and would call for appropriate measures as well.

However, it is one thing to welcome the decision for having suggested the rationalisation of the criminal law and attempted selective de-criminalisation\textsuperscript{253}, but quite another thing to have reservations in accepting a Constitutional right to die. This is because the implications of de-criminalisation are entirely of a different order than the implications of Constitutional recognition of the right to die. The range of implications of the Constitutional recognition are far-reaching and often not so obvious.

\textbf{(ii) Recognising a fundamental Right to Die}

The Supreme Court in Rathinam case not only declared Section 309 as being violative of Article 21 and thus unconstitutional but also conceded a Constitutional right to die. In doing so the Supreme Court seemed to have relied heavily on the Bombay High Court decision in Dubal case. Since the present case as well as the Dubal case related to various aspects of the right to die we propose to critique each of them separately.

\textbf{Reversing the direction of expansion of the right to life}

In Rathinam case, out of the fifteen questions posed by the Court, the second specifically states: "Has a person residing in India a right to die?". In the subsequent pages the Court has provided elaborate answers to the question. However, sequencing right to die immediately after an elaborate exposition of the Supreme Court's creative expansion of right to life appears somewhat illogical because most of the rights referred to in the judgment such as the right
against fetters, hand-cuffing, speedy trial, legal aid, medical aid, shelter, access to road etc. are all concerned with facilitating and enhancing the enjoyment of right to life itself. In a way all these rights guarantee the survival and the happy propagation of human race. In contrast, a right to die - that assures right to universal self-destruction and implies the extinction of human race itself - has nothing in common with the rights discussed earlier. Therefore, hitherto, the expansion of right to life in the last four decades has mainly been understood in terms of all those conditions that are in some way or the other conducive to a free flow and a full growth of life, not conditions that would lead to a decimation of life itself. Advocacy of such a life enhancing expansion has a special significance for a society like ours in which for a majority even the rudimentary right to life has not been realised.  

This is because for those whose basic necessities of life are yet to be met the promise of right to life still remains as the last hope. That is why it can be said that right to die is a movement in the reverse direction. It will not only create confusion in the right to life movement but may ultimately absolve the State from any kind of obligation to provide the life enhancing conditions. If may be respectfully stated that the task of creating a meaningful right to life depends not only on creative abilities but more so on a clear sense of direction.

The logic of negative aspect of right to life

The Dubal case logic of right to die being negative aspect of right to life has not only been approved by the Court in Rathinam case, but has been carried further and made the ideological basis of the judgment itself. We would like to state the criticism of Dubal case logic before analysing the views of the Court on the point. It has been argued:

"The aforesaid analogy between right to life and other freedoms is totally misplaced. It can arise on account of a superficial comparison between the freedoms. Ignoring the inherent dissimilarity between one right and the other, like the freedoms referred to in the above observations, the right to life remains meaningful only in its positive sense, because the negative aspect of this right would mean the end or the extinction of the
positive aspect for the claimant. It is either 'this' or 'that', not the suspension of 'this' for the time being as in the case of 'silence' 'non-association' and 'non-movement'. "256

The Supreme Court was aware of this criticism of Dubal case257 but only set it aside in the course of their assertion of right to die as follows:

"The aforesaid criticism is only partially correct inasmuch a though the negative aspect may not be enforceable on the analogy of the rights conferred by different clauses of Article 19, but one may refuse to live, if his living be not according to the person concerned worth living or if richness and fullness of life were not to demand living further. One may rightly think that having achieved all worldly pleasure or happiness he has something to achieve beyond this life. This desire of 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 person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking. "258

In the above observation the Supreme Court seems to be viewing right to die from the point pf view of mainly those whose richness or fullness of life or whose spiritual urge makes death a welcome event and life a 'detriment' or a 'disadvantage'. With due respect, it may be argued that such fortunate people are far and few even in our land of Rishis and Munis. Furthermore, creating a right merely from the perspective of a small Section of sensitive souls is neither desirable nor fair particularly for those who attempt suicide in India on account of material deprivations, soda isolations, personal rejections and oppressive systems. For them attempt to suicide is hardly a matter of clear and free choice. To them death is a bitter end to a continued agony, but rarely welcome.

**Prioritising Right to Die**

In the context of recognition of a right to die an additional argument can be: Even if the individual’s interest in terminating his life according to his wish is considered as well deserved and worthy of recognition, can it be accorded
priority over many other 'more' deserving interests? We have still not been able to recognise a right to basic necessities of life like food, shelter, clothing, medical care and even pure drinking water. Nor, despite a lot of fanfare from time to time, has the society been able to recognise the right to employment so far. Are the interest of basic necessities of life and the most acceptable way of securing them through work and industry less deserving than the right to die, whose recognition could easily wait till at least some of the more deserving interests received recognition? Furthermore, if for recognising a right to free primary education that affects almost forty per cent of the country's population, the Nation could patiently wait for forty-three years, what was the urgency in recognising the interest in dying, that at best, affects only a few? It may be argued that recognising other interests, like basic necessities, requires positive State action, while right to die does not in any way require any kind of positive action on the part of the State. Certain fallacies in the aforesaid argument can be pointed out: First, the non-interference or the negative perception of a right is only partly true, because in case of several rights like right to a road in a hilly rural area or right to free primary education a positive State action, be it in the form of planning and allocation of funds for roads or primary schools, is imperative for concrete realization of the rights. This is also in consonance with the notion of Welfare State or Service-State envisaged under Parts III and IV of the Constitution. Second, recognition of a right to die may also have negative implications for the State, in as much as the State may be obliged to deploy resources to counter the breach of peace and social alarm associated with the exercise of the right to die.

A jurisprudentially problematic right

The jurisprudential import of a right to die is likely to be very far-reaching. Is the right to die a fundamental right or merely a "liberty interest"? Would the right create correlative duties on the State, the community or the family? How would the conflicts between this right and other rights be reconciled?

Some of the aforesaid jurisprudential issues have come to light already in the context of the American debates on Euthanasia and the Court decisions
in Nancy Cruzan case\textsuperscript{262} and in Wanglie, Re\textsuperscript{263}. The case of Nancy Cruzan is an eye-opener for all those who have imagined an easy journey for a right to die. Nancy Cruzan was in a persistent vegetative state, a condition in which a person exhibits motor reflexes but evinces no indications of significant cognitive functions, for a prolonged period. The U.S. Supreme Court held that the parent's request to withdraw artificial life saving devices can be complied with only if there is a clear and convincing evidence of the person's wish to die. Since there was enough compliance with the clear and convincing evidence standard in Cruzan case, the devices were removed and Nancy Cruzan died peacefully some ten days later. However, the Supreme Court only conceded a Constitutionally protected "liberty-interest" in refusing unwanted medical treatment.\textsuperscript{264} The majority was careful not to suggest that competent patients have a fundamental right to refuse treatment. For, if they did so, the fundamental right would have to be protected unless the State interest was shown to be compelling.

In Cruzan case, the hospital authorities were not willing to comply with the parent's request to let Nancy die in peace. However, in Wanglie, Re the situation of claim of right to die got reversed, with the unconscious patient's physician expressing an opinion that she should not continue to receive life sustaining treatment although her family believed that this is not what she would have wanted. Who can best represent the terminally ill patient? In India will not all-round ignorance and totally inadequate and inefficient medical information system impair the patient's claim to a clear and informed death-wish?

In case we accord a right to die to each patient, who will be subject to a correlative duty towards him? Would it be the State or the members of his family? If the duty is on the State, would the duty be only of a negative nature that will preclude the State from interfering with the right or would it also extend to creating positive conditions for the enjoyment of such a right? Furthermore, even if the State can be saddled only with a negative duty, will the duty of non-interference with the liberty of terminating life, not also affect the State's legal
power to prohibit lower degree self-effacing activities such as smoking, alcoholism and drug-taking? This will substantially alter the individual-State relationship and impose serious limitations on the deployment of penal laws in the future? However, in case the right to die creates an obligation on the part of the family members to the avoid interference with the right to die, what will be the fate of family-support idea? Will each member of the family asserting his right to die not lead to total extinction of the institution itself? Even today, in India, family is the only institution to which individual members look for help and support in moments of crises of any kind. Will subjecting the family to individual's whim not unduly impair it? The most difficult problems would arise in the event of conflict between the prospective right to die wielding parent and his or her minor children who want him or her to live for providing parental care and protection. 

A right not in tune with social reality

While assessing the social relevance of a right to die, it would be worthwhile to re-state what has been said earlier in these words:

"The issues like 'euthanasia', 'organ transplant' and 'right to die' can be meaningfully discussed only in the context of the specific social reality. While discussing these issues in the context of our society, there is a need to keep in mind the often ignored perspective of the population in the lower stratum of the society comprising approximately two hundred million destitutes whose basic needs of food, shelter, medical treatment, education etc. still remain unfulfilled. This population - largely illiterate, propertyless and jobless - lives through queer ways: parents selling or pleading their progeny for money, individuals selling their blood or organs, children of tender age working under dehumanising and exploitative conditions, is a part of their life story. In some hard cases even all this might not be enough to ward-off the real risk of death due to starvation (under famine or even non-famine conditions), exposure in winters, heat
stroke in summers, etc., ... the deliberations on the issue of 'right to die' has to keep in mind the perspective of even those who still struggle for securing the crude right to life itself, those for whom life means nothing more than bare physical survival, be it at the cost of human dignity or even the fear of losing one's kith and kin."

In what way has Rathinam case been able to take into account the ground realities associated with the suicide prone conditions in India?

The Court has sadly missed to mention the indigenous suicide causation researches and studies, which invariably reveal that a majority of suicides in India, particularly suicides by married women, are more a desperate bid to secure the elusive right to life itself.267 Even in the two criminal petitions that brought the matter before the Supreme Court, such as Maruti's Sripati Dubal's bid to self-immolate to draw the attention of the Commissioner and Nagbhusan Patnaik's fast- unto-death to improve the conditions in prison were more to assert life meaningfully than to give it up. It is even sadder still that the Court knew the predicament but only cared to opt for an easy way out thus:

"If human beings can be treated inhumanely as a very large segment of our population is, which in a significant measure may be due to wrong (immoral) act of others, charge of immorality cannot be and, in any case, should not be, levied, if any such human being or like of them, feel and think that it would be better to end the wretched life instead of allowing further humiliation on torture."268

With respect, it may be submitted that the Court was expected to take a positive stand and resolve to change the 'immoral situation' and see that others are not permitted to perpetrate wrong acts on large Sections of our population. But, instead, the Court only found a solution in death. The Court considered attuning this part of criminal law to global wavelength269 more worthwhile than showing equal concern about those leading a wretched life.

To conclude we can say that there is no doubt that in Rathinam case the Court faced the teasing reality of outdated criminal law, slow and insensitive
law reform procedure and an expectation that the judiciary could do something to resolve the situation. The hard situation almost forced the Court to opt for unusual brand of judicial activism. The Court struck down Section 309 of the Penal Code as being violative of Article 21 and thus unConstitutional. This way the Court went beyond the traditional procedural due process and entered the domain of substantive due process. Hitherto even after Maneka Gandhi case the Courts have rarely gone into substantive issues for striking down the laws or the provisions. What then were the other alternatives before the Court?

First, the Court could have backed its strong plea for decriminalisation with a specific recommendation to Parliament to amend the law in terms of the Law Commission recommendation. The Court has itself stated that in their counter-affidavit the Union of India has mentioned that criminal law reform is likely to be undertaken in the near future. Furthermore, there are instances of piecemeal reform in the field of rape law which was undertaken even after the lapse of the Indian Penal Code (Amendment) Bill of 1972 and 1978.

Second, the Court could have in the exercise of inherent powers of justice quashed all pending proceedings under Section 309 throughout the country and also made specific recommendations of an expeditious legislative reform. While the legislative reform was underway the Court could have kept the petitions pending and got the suicide situation scientifically analysed with a view to finding effective ways and means of coping with the social problem. The petitions could have been finally disposed off with specific guidelines for dealing with diverse suicide prone situations. This way the Court could have played a meaningful creative role and perhaps given a better chance to many who lead a 'wretched life' to opt for a right to life and not a right to death.

Finally, conceding that the Court had very strong reasons for Constitutionally killing the flawed attempted suicide provision, the Court could have deployed an alternative conceptual category like liberty or liberty-interest
for achieving its objective. The distinct advantage of merely recognising a liberty to die would be the absence of any kind of obligation on the part of the State or the family towards the liberty-seeker. Furthermore, in case of a mere liberty the State could more easily circumscribe or even curtail the liberty in the larger interest. The Courts, particularly, in the United States, have been making a distinction between the different kinds of interest for the purposes of Constitutional protection. Speaking in the context of such categorisation, Wendy K. Mariner has observed:

"The result has been to divide human concerns into two highly unequal spheres - one for a few political and personal liberties, and a second for all other values. The first sphere of fundamental rights enjoys special insulation from majoritarian decision-making, while interests in the second - much larger sphere, remain subject to almost any form of restriction that is not patently and cruelly arbitrary." The possibility of progressive and regressive categorisation at the hands of the Court would not only enhance the possibilities of new claims being upgraded but also provide a meaningful handle to the Court to change the concepts according to social needs. It may be argued that there is little scope for such manoeuvrings in the Indian Constitutional scheme, but even substantive due process is also not traditionally permitted under the Constitutional scheme. Ultimately much depends upon the objective that is to be achieved and in this case the objective is to play down a 'right' to die so that the right to life could flourish vigorously.

**Alternative judicial responses**

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 suicide during the year 2006. This indicates an increase of 3.7 per cent over
the previous year's figure (1,13,914). The number of suicides in the country during the decade (1996-2006) has recorded an increase of 33.9 per cent (from 88,241 in 1996 to 1,18,112 in 2006).\(^{279}\)

The overall male: female ratio of suicide victims for the year 2006 was 64:38; however, the proportion of boys: girls suicide victims (up to 14 years of age) was 48:52, i.e., almost equal number of young girls have committed suicide as their male counterparts. Youths (15-29 years) and lower middle-aged people (30-44 years) were the prime groups taking recourse to the path of suicides. Around 35.7 per cent were youths in the age group of 15-29 years and 34.5 per cent were middle-aged persons in the age group of 30-44 years of the total suicide victims. Senior citizens have accounted for 7.7 per cent of the total victims. Social and economic causes have led most of the males to commit suicides, whereas emotional and personal causes have mainly driven females to end their lives.\(^{280}\)

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.\(^{281}\) It is an act of voluntarily or intentionally taking one's own life. Suicide needs to be distinguished from euthanasia or mercy-killing. Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own life sans the aid or assistance of any other human agency. Euthanasia, on the other hand, involves the intervention of other human agency to end the life. Euthanasia is nothing but homicide, and unless specifically excepted it is an offence. A priori, an attempt at mercy-killing is not an attempt to suicide.

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.

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.282

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:

**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."

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

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.

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

In view of the above, the Law Commission suo motu decided to take up study of this important issue of suicide prevention.
2. CONSTITUTIONALITY AND DESIRABILITY OF SECTION 309, IPC

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.

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."

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."

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 escaped human punishment if he had succeeded but is to be hounded by the police, because attempt has failed. Strange paradox that in the age of votaries of Euthanasia, suicide should be criminally punishable. Instead of the society hanging its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide compounds its inadequacy by treating the boy as a criminal. Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive Sections of the Penal Code. The continuance of Section 309 I.P.C. is an anachronism unworthy of a human society like ours. Medical
clinics for such social misfits certainly but police and prisons never. The very idea is revolting. This concept seeks to meet the challenge of social strains of modern urban and competitive economy by ruthless suppression of mere symptoms - this attempt can only result in failure. Need is for humane, civilized and socially oriented outlook and penology. Many penal offences are the offshoots of an unjust society and socially decadent outlook of love between young people being frustrated by false consideration of code, community or social pretensions. No wonder so long as society refuses to face this reality its coercive machinery will invoke the provision like Section 309 I.P.C. which has no justification right to continue remain on the statute book."

In Maruti Shripati Dubal v. State of Maharashtra284, the Bombay High Court held that Section 309, IPC is ultra vires the Constitution being violative of Articles 14 and 21 thereof and must be struck down. It was pointed out that the fundamental rights have their positive as well as negative aspects. For example, the freedom of speech and expression includes freedom not to speak and to remain silent. The freedom of association and movement likewise includes the freedom not to join any association or to move anywhere. The freedom of business and occupation includes freedom not to do business and to close down the existing business. If this is so, logically it must follow that right to live as recognized by Article 21 of the Constitution will include also a right not to live or not to be forced to live. To put it positively, Article 21 would include a right to die, or to terminate one's life. The Court further pointed out that the language of Section 309, IPC is sweeping in its nature. It does not define suicide. In fact, philosophers, moralists and sociologists are not agreed upon what constitutes suicide. What may be considered suicide in one community may not be considered so in another community and the different acts, though suicidal, may be described differently in different circumstances and at different times in the same community. While some suicides are eulogized, others are condemned. That is why perhaps wisely no attempt has been made by the legislature to define either. The want of a plausible definition itself makes the
provisions of Section 309 arbitrary and violative of Article 14. There are different mental, physical and social causes which may lead different individuals to attempt to commit suicide for different ends and purposes, there being nothing in common between them. Section 309 makes no distinction between them and treats them alike, making the provisions thereof arbitrary. Further, the Court observed that if the purpose of the punishment for attempted suicide is to prevent the prospective suicides by deterrence, the same is not achieved by punishing those who have made the attempts, as no deterrence is going to hold back those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. The provisions of Section 309 are unreasonable and arbitrary on this account also. As is rightly said, arbitrariness and equality are enemies of each other. The blanket prohibition on the right to die on pain of penalty, it was pointed out, is not reasonable.

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.

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

In P. Rathinam v. Union of India\(^{286}\), 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 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.

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.

The Supreme Court further observed that suicide is a psychiatric problem and not a manifestation of criminal instinct. What is needed to take care of suicide-prone persons are soft words and wise counseling (of a psychiatrist), and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor. It is a matter of extreme doubt whether by booking a person who has attempted to commit suicide to trial, suicides can be taken care of.

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

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.

In Gian Kaur v. State of Punjab\textsuperscript{286}, 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 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.

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

It may not be inapposite to also note C.A. Thomas Master v. Union of India\textsuperscript{287}, wherein the accused, a retired teacher of 80 years, wanted to voluntarily put an end to his life after having had a successful, contented and happy life. He stated that his mission in life had ended and argued that voluntary termination of one’s life was not equivalent to committing suicide. The Kerala High Court held that no distinction can be made between suicide as ordinarily understood and the right to voluntarily put an end to one’s life. Voluntary termination of one’s life for whatever reason would amount to suicide within the meaning of Sections 306 and 309, IPC. No distinction can 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**

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

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 say,-

"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 Brahma, free from sorrow and fear."

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 it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide. To this Max Muller adds a note as follows:

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

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

"It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation."

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

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

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

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

In 1995, pursuant to the reference made by the Government of India, the Law Commission undertook a comprehensive revision of the Indian Penal Code, with special reference to the Indian Penal Code (Amendment) Bill, 1978, in the light of the changed socio-legal scenario. The 156th Report of the Law Commission, submitted in August, 1997, after the judgment in Gian Kaur, recommended retention of Section 309, IPC. Chapter VIII of the said Report is reproduced below:

**SUICIDE: ABETMENT AND ATTEMPT**

*(i) 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."

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

"Section 306 prescribes punishment for 'abetment of suicide' while Section 309 punishes 'attempt to commit suicide'. Abetment of attempt to commit suicide is outside the purview of Section 306 and it is punishable only under Section 309 read with Section 107, IPC. In certain other jurisdictions, even though attempt to commit suicide is not a penal offence yet the abettor is made punishable. The provision there provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus even where the punishment for attempt to commit suicide is not
considered desirable, its abetment is made a penal offence. In other words assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision."

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

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

(ii) Section 309 - ATTEMPT TO COMMIT SUICIDE

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.

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

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

Subsequently, there have been significant judicial developments. The Delhi High Court in State v. Sanjav 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.

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

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

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.

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

"On the basis of what has been held and noted above, we state that Section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing
ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for.

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

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

"When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the 'right to life' under Article 21. The significant aspect of 'sanctity of life' is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to be included in 'protection of life'. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the 'right to die' as a part of the fundamental right guaranteed therein. Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to 'freedom of speech' etc. to provide a comparable basis to
hold that the 'right to life' also includes the 'right to die'. With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam qua Article 21.

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

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

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.

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.

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.

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

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.

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

Shri Justice Jahagirdar has expressed his view in his Article entitled "Attempt At Suicide - A Crime or A Cry" in the following words:
"A man commits suicide for various reasons and in diverse circumstances. The aim, in all cases, is to get deliverance from the several real or imaginary misfortunes to which that person is subjected. If he is successful in his attempt, it is regarded as deliverance; if unsuccessful it is regarded as an offence. Survival is an offence. It is impossible to find any rational justification for inflicting a punishment upon a person who has made an attempt to escape punishment which he thinks society is inflicting upon him. Is survival itself not sufficient punishment? ... Over a long period, fortunately, the attitude towards suicide and attempted suicide has changed and most civilised countries have done away with the concept of attempted suicide as an offence. 'Suicide', said Goethe, 'is an incident in human life which, however much disputed and discussed, demands sympathy of every man and in every age must be dealt with anew'. That attempted suicide is a matter for treatment and not punishment has been recognised by several countries. After the French Revolution in 1789, attempted suicide was abolished as an offence in France and subsequently in all European countries. England, as usual, was laggard in reforms, but fortunately in 1961 by the Suicide Act, the 'crime' of attempted suicide was abolished. In USSR and in most of the states in the US, it is not an offence. It was accepted that suicide is the result of psychological disturbances impervious to rational deterrents. In England a society called The Samaritans provides psychological support to those contemplating suicide. ... Most of the cases are psychiatric. ... The presence of Section 309 of the Penal Code is thus not only irrational and obnoxious but also positively harmful to the members of a society for whose benefit it is supposed to be on the statute book. As a result of this provision existing on the statute book, people needing mental treatment who are driven to commit suicide are prevented from seeking the same for fear of being punished. ... Which is the theory of punishment which informs Section 309 of the IPC? It cannot be deterrent because a man commits the act for reasons beyond his control; it cannot be reformative because a sick man is thrown among the felons. The punitive
theory is wholly irrelevant because the person attempting suicide does no wrong to others. In sum, the attempt to commit suicide cannot and should not be regarded as an offence. It is not committed by a person who wants to hurt anyone; it is not resorted to by one with criminal intention. Suicide and attempted suicide are difficult to define. An act which cannot be defined precisely cannot be punished. Suicide is attempted by people for reasons beyond their control. They need sympathy, care, love and treatment. By branding such people as 'criminals', treatment is rendered difficult. Punishment for attempted suicide is unsupportable by any recognized theory of punishment. ... What the 'abolitionists' of Section 309 are asking for is a fair treatment for those unfortunate, hapless people who fail in their attempts to commit suicide. The deletion of Section 309 is not an invitation or encouragement to attempt to commit suicide. ... Do not punish the helpless; help the helpless."

The World Health Organization, on knowing the efforts of the NGO, the SNEHA, Suicide Prevention Centre, for prevention of suicide, stated to them that having suicidal behaviours specified by law as a punishable offence has many negative effects at a public health level. Moreover, punishing with imprisonment a behaviour consequent to either a mental disorder or a social difficulty gives a completely wrong message to the population. There is now evidence from countries that have repealed similarly old legislation, of the overall improvement.

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

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

1. Emergency treatment for those who have attempted suicide is not readily accessible as they are referred by local hospitals and doctors to tertiary centres as it is termed as Medico Legal case. The time lost in the golden hour will save many lives.

2. Those who attempt suicide are already distressed and in psychological pain and for them to face the ignominy of police interrogation causes increased distress, shame, guilt and further suicide attempt.

3. At the time of family turmoil dealing with police procedure adds to the woes of the family.

4. It also leads to a gross under-reporting of attempted suicide and the magnitude of the problem is not unknown. Unless one is aware of the nature of extent of the problem effective intervention is not possible.

5. As many attempted suicides are categorized in the guise of accidental poisoning etc. emotional and mental health support is not available to those who have attempted as they are unable to access the services.

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

"Right to live: General - Every civilized legal system recognizes right to life. We are having a written Constitution. There are certain basic rights which have been treated as fundamental by the Founding Fathers of the Constitution. Article 21 is one of them. It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. Section 309 of the Indian Penal Code makes an attempt to commit suicide an offence punishable with imprisonment up to one year or with fine or with both. Thus, right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to end
his life. He has to perform his duties towards himself and towards the society at large.

**Right to live: Ambit and scope** - It is settled law that life does not mean 'animal existence'. Before more than 100 years, it was recognized by the U.S. Supreme Court in the leading case of Munn v. Illinois". This principle is recognized by our Supreme Court in Kharak Singh'2, Sunil Batra v. Delhi Administration'13 and in various other cases. After Maneka Gandhi v. Union of India'4, various rights have been held to be covered by Article 21; such as right to go abroad, right to privacy, right against solitary confinement, right to speedy trial, right to shelter, right to breathe in unpolluted environment, right to medical aid, right to education, etc. Thus, life does not mean mere living, but a glowing vitality - the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.

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

**Reduction of suffering** - Right to live would, however, mean right to live with human dignity up to the end of natural life. Thus, right to live would include right to die with dignity at the end of life and it should not
be equated with right to die an unnatural death curtailing natural span of life.

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

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

To conclude we can say that 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.

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.

Section 309 of the Indian Penal Code provides double punishment for a person who has already got fed up with his own life and desires to end it. Section 309 is also a stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide. It is unreasonable to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his own life. In such a case, the unfortunate
person deserves sympathy, counselling and appropriate treatment, and certainly not the prison.

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.

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.
References


5. 2000, IAC 360 House of Lords.


7. Subs. by Act 26 of 1955. Section 117 and Sch. for 'transportation for life" (w.e.f. Act 1st January. 1956) were omitted by XXVI of 1955 (Sch.).


10. Geo. IV. c. 64. Section 9.

11. 12 Vict., c. 46. Section 1; re-enacted (1861) 24 & 25 Vict., C. 94. Section 3.

12. 1 Hale P.C. 431: 4 Rep. 81 b; Dyson, R. & R. 523; Alison. 8 C. & P. 418: Jessop. 16 Cox. 204.


14. Section 309.

1420 (A.P.).


21. 24 & 25 vict., .100, Section 58.

22. Russell. R. & M. C.C.R 356: Leddington. 9 C. & P. 79. And it may be added. Blackstone is also of the same opinion; for. citing from Hawkins and Hales, he writes: "Afeio de se Is, therefore, he that deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as In attempting to kill another he runs upon his antagonist's sword: or shooting at another, the gun bursts and kills himself.' I Hawk, P.C. 68: 1 Hale P.C. 4)3; see as to this view Section 309 Comm.

23. This, because the English rule is different: see pars. 1. above.


25. Altson. 8 C& P. 418.


35. SURENDRA AGNIHOTRI V. STATE OF M.P.. 1998 CRLJ. 4443 AT P. 4447 (M.P.).


40. Moti Panday. 3 N.W.H.C.R 316.


50. Subs. by the Indian Penal Code (Amendment) Act. 1882 (8 of 1882), Section 7. for "and shall also be liable to fine."

51. Indian Penal Code (Amendment) act (VIII of 1882). Section 7.


54. (1870) 33 & 34 Vict.. c. 23 Section 1. which abolished forfeiture; (1882)45 & 46 Vict.. c. 19. Section 2. abolished other penalties attending the burial of felo de Se.


56. (1884) 8 Mad. 5 R. v. Rammaka.

57. (1912) 14 Bom. L.R. 146.

58. (1940) All. 647.


61. Tayec, (1883) Unrep. CrC. 188.


[261]
73. 1988 Cri LJ 549 (557,558)
74. Ibid.
75. Ibid.
76. 1994(2) Crimes 228 at p, 250 (S.C.)
80. (1994) (3) SSC 394.
84. (1996) (2) recent CR., 57.

85. Times of India, May 20, 2000. The latest report of the National Crime Record Bureau, 2001, pp. 253-259 stated that Delhi, with 126 incidents of dowry deaths in 1998 headed the list among the Union Territories and among the States, Uttar Pradesh (2,229) and Bihar (1,039) recorded higher number of dowry-related deaths in 1999 31.2 per cent of dowry deaths at national level were reported by Uttar Pradesh alone followed by Bihar 15.2 per cent. However, during 2001 these cases reported a decline of 2.0 per cent over the previous year (6,995). Around 1/3rd, i.e. 32.3 per cent of these cases at national level were reported from Uttar Pradesh (2211) followed by Bihar (S59). The highest rate of crime (1.4) was reported from Haryana.


88. Parliament appointed a joint Select Committee of the House in December 1 980 to examine and suggest various measures to streamline the Dowry Prohibition Act, 1961. The committee submitted its report to Parliament in August 1982 an suggested interview a number of important changes of consequential significance that were accepted and incorporated in the Act.

89. K.D. Gaur, Poor Victim of Uses and Abuses of Criminal Law and Process in India, 35: 4 J, I, L, I, 183, 196 (1993). Some of the important amendments made in the Dowry Prohibition Act, 1961 are as stated below: (1) Punishment will be given only to the taker of dowry, whereas it was applicable in case of both the giver and taker of do earlier (SCC. 3): (2) Complaints about dowry can be made within 10 years of marriage as against one year before (Section 6); (3) The clause 'as consideration
for the marriage’ is deleted from the definition of dowry under Section 2 of the Act of 1961; (4) Setting up of Family Court and special Court for trial of bride burning cases have been provided as against the earlier provision of trial by the general criminal Courts; (5) Permissible wedding expenses is linked to the income of bride's parents; and (6) Penalty for demanding dowry has been made more stringent. A minimum of 6 months of imprisonment with a maximum of 2 years of imprisonment and fine of Rs. 10,000 has been provided as against 6 months of imprisonment and Rs. 5,000 fine earlier (Section 4).


91. Presumption as to abetment of suicide by a married woman under Section 306, IPC has been provided under Section 113A, Evidence Act, 1872.


96. The Evidence Act, 1872, Section 113B Presumption as to Dowri Death,
97. For text of Explanation clause in chapter XXA under Section 498A, IPC.

98. Pawan Kumar v. State of Haryana, (1998) 3 SCC 3C9: AIR 1998 SC 958: 1998 Cr Lj 1144 (SC). The deceased and the appellant were married in 1985. After a few days of the marriage there was a demand of scooter and fridge. On account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated. In the meanwhile, her maternal uncle died, and she, along with her husband, visited Delhi to offer condolences. Ad by evening of the same day, instead of returning to her husband's place, she came to her sister's house. She remained there for a few days. Both her sister and brother-in-law deposed that she told them that her husband was maltreating her due to dowry demands, and that on not being satisfied, was harassing her. When her husband came to take her back she was reluctant, but her sister brought her down and sent her with the husband. She went with the husband, but with the last painful words, that 'it would be difficult now to see her face in the future'. On the very next day, she committed suicide.


4 SCC 596: 1996 Cr Lj 2337.


105. Lucy Caroll, 28 Journal of Indian Law Institute, (1986), pp. 14-35; See Annexure for the development of law represented by Sudha Goel's case, culminating in reducing of the first ever death sentence for dowry killing to life imprisonment by the Supreme Court.


112. 1987 Cr.L.J. 1412.

114. 1984 (1) chand L.R. 647.


119. A The spelling suttee is a phonetic spelling using the 19th century English orthography. However the sati transliteration is correct using the more modern IAST (International Alphabet of Sanskrit Transliteration) /which is the academic standard for writing the Sanskrit language with the Latin alphabet system.121

120. A Many, including Yuganta, by Irawati Karve

121. A Ibn Fadlan, Risala: Ibn Fadlan's embassy to the King of Volga Bulgaria (English-language translation)

122. A Strabo 15.1.30, 62; Diodorus Siculus 19.33; Sati Was Started For Preserving Caste


125. Letter, Panduranga Joshi Kulkarni is a description by a man who stopped his daughter-in-law's suicide. It has been suggested that his motivations were monetary. Women in World History A project of the Center for History and New Media, George Mason University.

126. Kamat for two examples

127. A Primary Sources: Letter, Francois Bernier Women in World History A project of the Center for History and New Media, George Mason University.


129. The Representation of Sati: Four Eighteenth Century Etchings by Baltazard Solvyns by Robert L. Hardgrave, Jr. The account uses the word "likely".

130. Women in The Sacred Laws by Shakuntala Rao Shastri The later law - Books: Page 24 Some of these included servants. These should probably all be seen as being in the original tradition of anumarana, perhaps a separate Article.

Salinadi rivulet, at Sankhu, 5th May 1806)

132. Worldwide Guide to Women in Leadership, "Women In Power, 1770-1800" ("1799-1800 and 1802-04 Regent Sri Sri Sri Maharani Raj Rajeshwari Devi of Nepal ... she was imprisoned at Helambu and killed by being forced to commit sati.").

133. De1'ing blessings of the goddess and the community: Disputes over sati (widow burning) in contemporary India by Masakazu Tanaka. An example in Tamil Sri Lanka.

134. The Representation of Sati: Four Eighteenth Century Etchings by Baltazard Solvyns by Robert L. Hardgrave, Jr.

135. Hindu Bengali Widows Through the Centuries from the Datamation Foundation a non-profit, apolitical, non-partisan registered Charitable Trust (Trust Deed # 3258 dated March 8, 2001) with its head office at Delhi.


137. Ibid


139. John Ovington, A Voyage to Surat: Since the Mahometans became Masters of the Indies, this execrable custom is much abated, and almost laid aside, by the orders which nabobs receive for suppressing and extinguishing it in all their provinces. And now it is very rare, except it be some Rajah's wives, that the Indian women burn at all.

140. Quoted from Kamat.

[269]
141. The Tradition of Sati Through the Centuries Kamat's potpourri: The Sati System


143. The Commission of Sati (Prevention) Act, 1987 (No.3 of 1988) on the web site of the Harvard School of Public Health

144. The Times of India, "Woman commits 'sati' in UP village", May 19, 2006.


146. Vishnu Smriti, 25-14 (available online at sacred-texts.com).

147. 3.1 Women in Indo-Aryan Societies:Sati this translation is ascribed to Kane References Pages 199-200

148. Compare alternative translation by Griffith:

   Let these unwidowed dames with noble husbands adorn themselves with fragrant balm and unguent.

   Decked with fair jewels, tearless, free from sorrow, first let the dames go up to where he lieth.

Hymn XVIII. Various Deities., Rig Veda, tr. by Ralph T.H. Griffith (1896)


150. The little-known Srivaisnavā sect in Tamil Nadu is among the few religious traditions in India that treats women on par with men by Yoginder Sikand, in Comrhnualism Combat February 1999.

151. "About Lingayat" on lingayat.com

152. Women in Sikhism Sandeep Singh Brar

153. AN INCOMPARABLE PROPHET: Guru Amar Dass (1479-1574) by Sirdar
Kapur Singh (National Professor of Sikhism) oil the "Gateway to Sikhism".


156. "Can the Subaltern Speak?" entry, Teachywiki.

157. Central Sati Act - An analysis by Maja Daruwala is an advocate practicing in the Delhi High Court. Courtesy: The Lawyers January 1988. The web site is called "People's Union for Civil Liberties"

158. XVII Economic and Social Developments under the Mughals from Muslim Civilization in India by S. M. Ikram edited by Ainslie T. Embree New York: Columbia University Press, 1964. This page maintained by Prof. Frances Pritchett, Columbia University

159. The Portuguese: Goan History from: Inside Goa by Manohar Malgonkar.

160. To Cherish and to Share: The Goan Christian Heritage Paper presented at the 1991 Conference on Goa at the University of Toronto by: John Correia Afonso S.J. from: "South Asian Studies Papers", no 9; Goa: Goa Continuity and Change; Edited by Narendra K. Wagle and George Coelho; University of Toronto Centre for South Asian Studies 1995

161. Central Sati Act - An analysis by Maja Daruwala is an advocate practicing in the Delhi High Court. Courtesy: The Lawyers January 1988. The web site is called "People's Union for Civil Liberties"


163. Trial by fire, Communalism Combat, Special Report, February-March


166. Woman jumps into husband's funeral pyre


170. Luxembourg says 'yes' to euthanasia.


172. ibid


175. History of Euthanasia.

176. Senicide

177. Humphry and Wickett (1986:8-10) on More, Montaigne, Donne, and Bacon.


180. Appel, Jacob M. "A Duty to Kill? A Duty to Die." Bulletin of the History of
Medical. 78.3 (October 2004): 610-634.

181. A Merciful End: The Euthanasia Movement in Modern America (Hardcover) by Ian Dowbiggin.


183. Merciful Release and other sources...

184. A EugenicsArchive.org

185. Kamisar 1977


188. A Humphrey and Wickett, ch.4. See also, Kamisar and John Bodkin Adams case.

189. For the UK see the Bland case.

190. Cruzan v. Director, Missouri Department of Health.


192. Australia passes first euthanasia law

193. Government policies below for specific examples

194. Death on prescription? I Independent The (London) Find Articles at BNET.com

195. Also Utilitarianism

196. A See Religious views of suicide

197. "Terminally ill patients often fear being a burden to others and may feel they ought to request euthanasia to relieve their relatives from distress." letter to the editor of the Financial Times by Dr David Jeffrey, published 11 Jan 2003.
"If euthanasia became socially acceptable, the sick would no longer be able to trust either doctors or their relatives: many of those earnestly counselling a painless, 'dignified' death would be doing so mainly on financial grounds. Euthanasia would become a euphemism for assisted murder." FT WEEKEND - THE FRONT LINE: Don't take liberties with the right to die by Michael Prowse, Financial Times, 4th Jan 2003

SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH: DECLARATION ON EUTHANASIA quoting GAUDIUM ET SPES


"...no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly, nor can any authority legitimately recommend or permit such an action."

E.g., J. David Bleich, Eliezer Waldenberg

E.g., see writings of Daniel Sinclair, Moshe Tendler, Shlomo Zalman Auerbach, Moshe Feinstein.

Elliot Dorff and, for earlier speculation, Byron Sherwin.


Translation of Sahih Muslim, Book 35. University of Southern California, Hadith 35.6485.

Translation of Sahih Muslim, Book 35. University of Southern California, Hadith 35.6480.

This is the first of the Five Precepts. It has various interpretations.

There are only four offenses (parajika) monk; eight such offenses for a nun (bhikkhuni). The other three parajika for monks are: engaging in a sexual act; stealing; and, falsely claiming to have achieved advanced spiritual states (such as jhanic absorptions or nibbana) (Thanissaro 1994).

Thanissaro Bhikkhu "Educating Compassion" Article link at Access to Insight


Hinduism FAQ: "Hinduism and Suicide." HinduWebsite.

"Euthanasia and Suicide: The Hindu View." BBC Religion & Ethics.

Ibid.


It had earlier received the assent of the Lower House of Netherlands' legislature.


231. 1995 Cri L J 96 (Bom)

232. Id., at 99.

233. (1996) 2 SCC 648


236. "India joins select nations in legalising "passive euthanasia"". The Hindu.


239. In the Hohfeldian scheme of jural relations rights and liberty lead to different legal consequences. Dias observes in this context: “It is usual for liberties to be supported by claims but it is important to realise that they are distinct and separate and the distinction is reflected in case law.” Jurisprudence, 5th Edn. Butter worths (1985) p.29.

240. Cruzan v. Director, Missouri Dept. of Health, 110 S Ct. 2841, 2852 (1990)


245. (1994) 3 SCC 394 (hereinafter referred to a Rathinam case): Coram: Justice R.M. Sahai and Justice B.L. Hansaria (Hansaria, J. wrote the judgment for Sahai, J. and himself)

112 (hereinafter referred to as Pande B.B. (1987). However it appears that the Court has not adequately taken note of the main thrust of the author's criticism of Dubal case. Therefore, the present comment would refer to the earlier Article as and when required.


248. 1985 Cri LJ 931, (Delhi)

249. Cri. Revision No. 230 of 1985: Unreported (hereinafter referred to as Yogesh Sharma case)

250. AIR 1994 SC 1844.

251. The Rathinam case has already led scholars to debate the tenability of attempted Sati offence under Section 3 of the Commission of Sati (Prevention) Act, 1987. Though it may be argued that striking down Section 309 of the Penal Code would not affect an offence constituted under a special statute, but the Supreme Court decision would considerably weaken the moral and social justifications of an offence that had been questionable right at its inception.

252. It may be suggested that for such hard cases a new category of civil wrongs like the European 'Administrative Infractions' may be devised.

253. The European Committee on Crime Problems has in its Report on Decriminalisation (1980) accepted decriminalisation as an accepted objective of Law Reform.


256. Pande, B.B.(1987) at p. 117

257. AIR 1994 SC 1844.
258. Id.


261. In the Hohfeldian scheme of jural relations rights and liberty lead to different legal consequences. Dias observes in this context: "It is usual for liberties to be supported by claims, but it is important to realise that they are distinct and separate and the distinction is reflected in case law." Jurisprudence, 5th Edn., Butterworths, (1985) p. 29

262. Cruzan v. Director, Missouri Dept. of Health, 110 S. Ct. 2841, 2852 (1990)


265. Section 317 of the Penal Code makes abandonment of children by parents an offence. Similarly, Section 12E of the Code of Criminal Procedure creates an obligation for the parents to provide maintenance to minor children.

266. Pande, B.B. (1987) at pp. 112-13

267. In Shreerangyee, Re, (1973) 1 MLJ 231 the unfortunate woman was prosecuted for murder of her children and attempted suicide in a situation in which she not only displayed a strong desire of securing the material conditions of life but also a dignified life (she had declined the financial help from her brother-in- law because it involved sexual trade-off).

268. AIR 1994 SC 1844.
269. Ibid.

270. The Supreme Court in Rajendra Prasad v. State on U.P., (1979) 3 SCC 746 had faced a similar teasing reality in the context of death penalty law. In that case Justice V.R. Krishnan Iyer in his inimitable style re-opened the Constitutionality issue to strike down death penalty.


272. AIR 1994 SC 1844.

273. If Chief Justice Sachar could do this in respect of 119 pending prosecutions under Section 309 in the Delhi High Court (See Yogesh Sharma case) what came in the way of the Supreme Court? Quashing of proceedings would also have the required demonstration effect for the police and lower judiciary and would have carried the message home in a better way.

274. Stengel Erwin: Suicide and Attempted Suicide, Mc Gibbon & Kee, (1964) and Jacobs Jerry: Adolescent Suicide, Wiley-Inter Science (1971), for an elaborate understanding of the motivations of suicides.

275. Hawton, Keith et al. in Attempted Suicide, Oxford Medical Pub. (1987) has elaborated three approaches for the prevention of suicides. It is notable that even in an advanced country the approach aimed at improving the living conditions proves most difficult. "The third approach to prevention, and the most difficult, lies in economic and social changes which could lead to general improvement in standards of living. Unfortunately, current trends, especially with regard to unemployment are in the opposite direction." at p. 189

276. Supra n, 20.

International Association for Suicide Prevention.


ibid.


1985 CriLJ 931.

1987 CriLJ 743.

AIR 1994 SC 1844.

AIR 1996 SC 946.

2000 CriLJ 3729.