DECRIMINALISATION OF ATTEMPT TO COMMIT SUICIDE IN INDIA

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INTRODUCTION

"When life is so burdensome, death has become for man a sought-after refuge" - Herodotus

"Suicide is a permanent solution to a temporary problem" - Common adage

Both these sayings reflect the two faces of a popular affliction - 'Suicide'; something which is know to every Indian. India is witness to many reasons of suicide ranging from victims of domestic violence, jilted lovers to farmer's suicide. As per a study, of every five lakh suicides reported worldwide, one lakh suicides are from India. Though India ranks 43rd in the WHO ranking of suicides per 100,000 people, the rate (10.3%) is increasing and remains above the world rate. Poisoning, hanging and self-immolation were the top common methods used to commit suicide.

India sees a north-south divide here as well with South Indians accounting for a rate above 15% and North Indians below 3%. Most of the suicides are, alarmingly enough, committed by mature youth unable to cope up with the ever growing modern demands of life. About 40% suicides are reported at the age group below 30 year and 70% below 40 years. This impacts their family and immediate society both financially and emotionally.

Life is a stage with one entrance but many exits. Among those, suicide is one exit having a long ancestry. In 1968, the World Health Organisation defined suicidal act as "the injury with varying degree of lethal intent" and that suicide may be defined as "a suicidal act with fatal outcome". Suicidal acts with non fatal outcome are labelled by World Health Organisation as "attempted suicide." Suicide has been an act of condemnation as well as commendation through the ages.

A. Historical Background

The act of suicide is forbidden in Khoran and the Holy Bible. The common belief among Hindus is that a person who commits suicide will not attain "Moksha" and his Soul will wander around, haunting and tormenting people. In recent times, attempted suicide, though a failed act has gained more importance (than the suicide, a successful act) since it is

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considered as an offence and is punishable under Section 309 of Indian Penal Code. A lot of conflicting opinions have generated on the desirability of retaining or deleting Section 309 of Indian Penal Code because of some contrasting judgments given by our Courts. Article 21 of the Constitution of India is a provision guaranteeing protection of life and personal liberty and by no stretch of the imagination can extinction of life be read to be included in protection of life. By declaring an attempt to commit suicide a crime, the Indian Penal Code upholds the dignity of human life, because human life is as precious to the State as it is, to its holder and the State cannot turn a blind eye to a person in attempting to kill himself. Another set of people are of the opinion that the Section 309 of Indian Penal Code is cruel and irrational because it provides double punishment for a troubled individual whose deep unhappiness had caused him to try and end his life. It is cruel to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide. And also, what is the legal status of individuals who, by virtue of their religion refuse food and fast unto death? In India there are innumerable cases wherein religious ascetics fast to death without State intervening and are not punished though such acts amount to attempt to suicide.

B. Meaning of Suicide

As per Concise Oxford Dictionary, 9th Edition, Page 1393, ‘Suicide’ is defined as 'the intentional killing of oneself.'

Suicide is referred to as:

"every act of self destruction is, in common language described by the word ‘suicide’ provided it is an intentional act of a party knowing the probable consequence of what he is about."¹

Suicide is never to be presumed. Intention is the essential legal ingredient. A finding of suicide must be on evidence of intention.

A person who jumps into a well in order to avoid and escape from her husband and subsequently comes out of the well herself, cannot be convicted under this section if there is no evidence to show that she wanted to commit suicide; Emperor v. Dhirajia²

C. Suicide in India

In India, more than one hundred thousand lives are lost to suicide every year³. In the last two decades, the suicide rate has increased from 7.9 per 100,000 per year to 10.3. An estimated one in 60 people in India are affected by suicide if we include those who have attempted suicide and those who have been affected by suicide of a close family member or

² AIR 1940 All 486.
³ Vijaykumar, 2007
friend. Thus, suicidal behavior is a major public health and mental health problem that demands urgent action.

One reason why Indians view suicide with disapproval is its characterization as a crime in the Indian Penal Code itself. The Indian Penal Code was formulated by the British during the British Raj Regime of 1860 and is founded primarily on English law, with modifications and adaptations to Indian conditions\(^4\). Great Britain once criminalized suicide also\(^5\) and, through colonization and adoption of British customs, India in turn also adopted the law regulating suicide. India’s suicide law is based on the principle that the State is the protector of the lives of the people and the State is under an obligation to prevent people from taking their own lives just as it prevents citizens from taking the lives of others\(^6\).

Aside from the fact that suicide is criminalized in India, some of the censure that accompanies suicide is also caused by Indian culture itself. Indian culture (whether Hindu, Islamic or other cultural system) imposes strong degree of social regulation on its members. Survivors of attempted suicide are viewed as tainted members of society. In addition, because of the strictness of the Penal Code and the cultural shame of follow-up police visits, it results in gross underreporting, refusal to help the affected person, and fear of notifying the proper authorities. In turn, individuals and their families conceal the facts involved in the attempt, and as a result, the affected person does not receive proper medical or psychiatric help. Additionally, the social structure of the culture impacts the primary motives for suicide in India which often involve friction with parents, in-laws and spouses (Lester, Agarwal & Natarajan, 1999)\(^7\).

In India, the Supreme Court has begun moving towards decriminalizing attempted suicide. Currently, there has been heavy debate regarding the humanitarian aspect of this law and the courts have continually commented on the constitutionality and desirability of this provision, but judicial opinion on suicide has been varied and contradictory. The Supreme Court of India at one point even declared Section 309 unconstitutional on the grounds that it amounted to punishing the accused victim twice.\(^8\)

\(^4\) Keeton, 1970  
\(^5\) Neeleman, 1996  
\(^6\) Gaur, 2004  
\(^7\) ExpressIndia.com, Agencies, Why punish those who attempt suicide?  
\(^8\) JT 1994 (3) SC 392.
(i) Right to Die

Suicide has often attracted highly polarized views. On one hand many have argued that they have been guaranteed a right to life under Article 14 and 21 of the constitution, on the other hand the right to take one’s life has been labelled as a criminal act affecting many other people around the deceased. One camp believes that punishing someone under Section 309 who attempted suicide is both illogical and insensitive, as what he needs at that instant is immediate care and counsel and not being ferried away by police.

The Supreme Court has set aside its earlier judgment in *P. Rathinam/Nagbhushan Patnaik v. Union of India*,\(^9\) wherein the Court had struck down Section 309 as unconstitutional. It has said that, "in a country where one-half of its population still live below the poverty line, the right to die by suicide cannot be granted to any person. Article 21 of the Constitution, which gives right to life and personal liberty, by no stretch of imagination can be said to impliedly include right to death by committing suicide. The section is also not violative of article 14. There is no requirement of awarding any minimum sentence. The sentence of imprisonment or fine is not compulsory but discretionary"

However, lately in *Gian Kaur v. State of Punjab*,\(^10\) the apex court feels that there is a need to decriminalize Section 309.

(ii) Attempt to suicide: Law and Policy

Suicide is a criminal offence under *Section 309 of the IPC* with a punishment of up to one year in jail and a fine. The section reads:

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

The offence is bailable, non-compoundable and triable by any Magistrate.

Many instances of failed suicide attempts have revealed an utter lack of criminal intent or any pre-meditated motive. Most of the times, it simply turns out to be frustration / anger / pain against someone or something which make a person take his own life. The so called "criminal intent" is often lacking and hard to attribute unless the person dying would have planned to benefit somehow or someone. Which again would be a “rarest of rare

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10. *AIR* 1996 SC 946
“case”? It has been found that in most cases of attempted suicide, the mental state of the person can be counselled back to normal. So it ends up something like this- one cannot be punished if he succeeds in his attempt to take his life and will have to face penal action if he fails!

It was felt that people who attempted suicide were largely victims of mental depression. Many of the reasons for committing suicide – such as depression, emotional pain or economic hardship are transitory and can be made better by therapy and through making changes to some aspects of one's life.

Proper care and counselling of such persons can actually save them from taking this drastic step. The government feels that there is a 'need to care and not punish such people' and The Mental Health Care Bill was introduced to the Rajya Sabha on August 19, 2013 in this regard.

(iii) Mental Health Care Bill 2013

With the Mental Health Care Bill 2013 which was tabled in session of Rajya Sabha on August 2013, the Union health ministry wants to pushing decriminalize the act of attempting suicide. The bill was referred by the Rajya Sabha to a Standing Committee on September 18, 2013, which submitted a report on 20 November 2013. But U.P.A government does not succeed to decriminalise this offence.

Though a Bill in this regard was introduced in the Rajya Sabha in 1972 to de-criminalise the provision, it was not ratified by the Lok Sabha as the House was dissolved in 1979 when the Bill was pending there for consideration and the Bill had lapsed.

It will be significant to note that the Centre had earlier rejected the 2008 report of the Law Commission, which favoured scrapping of Section 309 of the IPC.

It its 210th report on “Humanisation and Decriminalisation of Attempt to Suicide”, the Commission had said: “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... When a troubled individual tries to end his life, it would be cruel to visit him with punishment on his failure to die.” Terming the provision as “inhuman”, the commission had said “repeal of the anachronistic law would save many lives and relieve the distressed of his sufferings”, it added.

The Supreme Court has in its latest judgments taken a view in favour of decriminalization of this issue. Hearing a petition in September, 2011 the apex court had recommended to Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic.
A bench of justice Markandey Katju and justice Gyan Sudha Mishra, which legalised passive euthanasia in India, said:

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".....the time has come when it should be deleted by Parliament as it has become anachronistic."
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The bench said:

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"A person attempts suicide in a depression, and hence he needs help, rather than punishment. We recommend to Parliament to consider the feasibility of deleting Section 309 from the IPC."
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Taking a cue, the centre had sought the opinion of the states in which 25 out of 29 states favoured its repeal.

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### D. Constitutionality of Section 309, I.P.C

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:
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“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
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Article 21 of the Constitution provides for protection of life and personal liberty and reads as under:
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“No person shall be deprived of his life or personal liberty except according to procedure established by law.”
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It will be apposite to first note the following observation of the Delhi High Court in State v. Sanjay Kumar Bhatia

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“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
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11 1985 CriLJ 931

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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 Maharashtra, the Bombay High Court held that section 309, IPC is ultra vires the Constitution being

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

12 1987 CriLJ 743
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 onethird 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 disenablement need nursing homes and not prisons to prevent them from making the attempts again.

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

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13 *AIR* 1994 SC 1844
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 counselling (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{14}, however, a Constitution Bench of the Supreme Court overruled the decisions in Maruti Shripati Dubal and P. Rathinam, holding that Article

\textsuperscript{14} AIR 1996 SC 946
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,15 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.

E. Abetment of Attempt to Commit Suicide

However, where does this place someone who supports or abets a suicide. Abetment of suicide is again a criminal act under Section 306 of IPC attracting even larger penal action; an imprisonment that may extend to ten years. Section 306 dealing with

15 2000 CriLJ 3729
abetment of suicide states:

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

The basic constituents of an offence under Section 306 are:

- Suicidal death
- Abetment there of
- Intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary

_Pallem Deniel Victoraiions Victor Manter v. State of Andhra Pradesh_,\textsuperscript{16} and in _Sangarabonia Sreenu v. State of Andhra Pradesh_,\textsuperscript{17}

A wider net of responsibility is cast on the people near and dear to person who attempts suicide to guide him, support him and wean him away to brighter aspects of life. Instead when he eggs on the person to take his life, he is supposed to be a partnering a crime and worse still, shirking away from his powers to stop the act and being a ringside viewer.

F. Recommendations by Law Commissions of India Through its Report no. 210 About Section 309 I.P.C in October 2008

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

2. The criminal law must not act with misplaced over zeal 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.

3. Section 309 of the Indian Penal Code provides double punishment for a person who has already got fed up with his own life and desires to end it. Section 309 is also a stumbling block in prevention of suicides and improving the access of medical care to

\textsuperscript{16} 1997(1) Crimes 499 (AP).
\textsuperscript{17} 1997(4) Supreme 214.
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.

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

5. 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.

G. How to Prevent Suicidal Tendencies

Suicides are surprisingly not a fatal or incurable disease and can be prevented by right guidance and engagement. A person who is feeling suicidal can be prevented from actually attempting suicide by:

1. Keeping the person socially integrated and engaged by immediate family.
2. Taking help from an experienced counsellor.
3. Making him feel an important part of society (social integration).
4. Change in Lifestyle.
5. Setting up of suicide counselling camps and widely accessible crisis hotlines.

H. B.J.P Government Works On Decriminalization of Section 309 I.P.C

NEW DELHI: The government has decided to decriminalize "attempt to suicide" by deleting Section 309 of the Indian Penal Code from the statute book. Under the said Section, a suicide bid is punishable with imprisonment up to one year, or with fine, or both. Stating this in reply to a question in the Rajya Sabha on Wednesday, minister of state for home Haribhai Parathibhai Chaudhary said the government had decided to drop Section 309 from the IPC after 18 states and 4 Union territories backed the recommendation of the Law Commission of India in this regard. Government sources told TOI that a Cabinet note on the Indian Penal Code (Amendment) Bill has already been circulated by the Union home ministry among other ministries such as law and health.

I. Conclusion

Suicide occurs in all ages and we should remember that life is a gift given by God and he alone can take it. It’s 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. Attempt to suicide is more a manifestation of a diseased condition of mind deserving of care rather than imprisonment. The law makers should realize that criminal law must act as effective machinery to cure the intended and not act with misplaced over zeal. The above discussion clearly indicates that Section 309, IPC does not stand up to the constitutional requirements and is otherwise also an ineffective and a draconian law which punishes not offenders but victims of circumstances. Also, it does not serve any purpose as no person contemplating suicide is deterred by the thought of being imprisoned for a year if he fails in his attempt. An important conclusion of the discussion is that each member of society has an inalienable right to die also, embedded in his right to life, the inherent decision making power on the fundamental question of whether or not to continue with life. Thus, right to die of one’s own free will and right not to live a forced life is a Fundamental Right inherent in us and also protected by our Constitution under Article 21 and it should not be criminal. The right to die that we have cannot be curbed unreasonably but regulated in a reasonable manner. In light of the above, the author proposes legislative repeal of Section 309, IPC and enactment of another legislation which regulates our right to die by providing reasonable reformatory measures. Such a law should provide counselling, rehabilitation etc. to any person who attempts to commit suicide. This way the person has a chance to be reformed, be given a new perspective and a new will to live. For bringing about this change, the government shall have to provide new infrastructure like rehabilitation centres, people who can impart lessons on spirituality, psychologists, psychiatrists etc. Also, proper procedures for rehabilitation and making the Government aware of the problems that made the person attempt to take his own life should be set in place. All this has to be ensured in such legislation. The proposed legislation shall be constitutionally correct as attempt to commit suicide would not remain a punishable offence but shall only be regulated by Government through a just, fair and reasonable procedure. The Government shall then be under an obligation to try and reform a person who has lost all hope in life instead of punishing him. I appreciate the step taken by the BJP government to decriminalise “attempt to suicide”.