

ATTEMPT TO SUICIDE-A LEGAL PROBLEMS

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ABSTRACT

The attempt to suicide is dealt with section 309 of the Indian Penal code. The legislators of India, though didn't delete section 309, passed the mental health care act 2017, thus limiting the scope of section 309 up to a great extent. The development of the law on the attempt to suicide of India begins with its inclusion as a crime punishable with imprisonment and through it being declared a human right included in the right to life and further it being declared as not a part of the same and finally it being in its contemporary position with the mental health act 2017 as well as section 309 coexisting.

INTRODUCTION

While a person who has committed suicide is beyond the reach of the law, there can still be legal consequences in the cases of treatment of the corpse or the fate of the person's property or family members. The associated matters of assisting a suicide and attempting suicide have also been dealt with by the laws of some jurisdictions. The word suicide was first used by Sir Thomas Browne in his "Religio Medici" in 1642 and subsequently by Walter Charleton in 1651.

The word "suicide" comes from two Latin roots, Sui ("of oneself") and Cidium ("killing" or "slaying").¹ A suicide is a death caused by self-directed injurious behavior with an intent to die as a result of the behavior while a suicide attempt is a non-fatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior; might not result in injury.² Schneidman (1976) defined it as, "the human act of self-inflicted, self-intentional cessation of life". It is an act committed out of constricted thinking, tunneled logic and acute anguish.³ A Suicidal act is defined "as the injury with varying degrees of lethal intent and suicide may be defined as a suicidal act with fatal outcome" by the world health organization. Durkheim (1858-1917) defined suicide as "death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result." This excludes those who survive the attempt.⁴ A suicide attempt is an attempt

¹Minois, Georges. *History of Suicide: Voluntary Death in Western Culture*. Trans. Lydia G. Cochrane.

Baltimore, MD: The John Hopkins University Press, 1999

²Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. *Web-based Injury Statistics Query and Reporting System (WISQARS)*: <https://www.cdc.gov/ncipc/wisqars>

³ Durkheim E. *A study in sociology* trans by J.A. Spolding & G. Simpson with introduction by Simpson Glancole, 1917, free press.

⁴Schneidman E. *Definition of suicide*; Jason Aronson 1977

where a person tries to commit suicide but survives.⁵ It may be referred to as a failed suicide attempt or nonfatal suicide attempt, but the latter terms are subject to debate among researchers.⁶

II. HISTORY OF CRIMINALISATION OF ATTEMPTED SUICIDE

Historically, life is considered to be a gift by god and thus taking away one's own life has always been forbidden. In ancient Rome or medieval Japan, suicide was seen as a defiant act of extreme personal freedom against perceived or actual tyrants. In ancient Athens, a person who had died by suicide (without the approval of the state) was denied the honors of a normal burial.⁷ Additionally, all of the person's property was confiscated.⁸ In the Christian church, people who attempted suicide were excommunicated because of the religiously polarizing nature of the topic.⁹ In the late 19th century in Great Britain, attempted suicide was deemed to be equivalent to attempted murder and could be punished by hanging.

While previously criminally punishable, attempted suicide is no longer in most Western countries, it remains a criminal offense in most Islamic countries.¹⁰

III. ATTEMPT OF SUICIDE AROUND THE WORLD

Destigmatization of the act of suicide started with the pioneering work of Durkheim. His theory that external pressures or societal stressors, can contribute to suicidal behavior, increased awareness about suicide and helped to begin destigmatization. Internationally, Germany, in 1751, was the first country to decriminalize attempted suicide.¹¹ In United States, suicide is not illegal. Almost no country in Europe currently considers attempted suicide to be a crime except Cyprus, where it is illegal, attempted suicide constitutes a misdemeanor.¹² Suicide directly involving only the deceased person is not by itself a criminal offence under Scots Law and has not been in recent history. As with many other western societies, New Zealand currently has no laws against suicide in

⁵Danuta Wasserman (2016). *Suicide: An unnecessary death*. Oxford University Press. p.63. ISBN 0191026840. Retrieved September 27, 2017.

⁶Rory C. O'Connor, Jane Pirkis (2016). *The International Handbook of Suicide Prevention*. John Wiley & Sons. pp. 13–14. ISBN 1118903234. Retrieved September 27, 2017

⁷Plato. *Laws*, Book IX

⁸Durkheim, Émile (1897). *Suicide*. New York: The Free Press (reprint, 1997), 327. ISBN 0-684-83632-7.

⁹McLaughlin, Columba (2007). *Suicide-related behaviour understanding, caring and therapeutic responses*. Chichester, England: John Wiley & Sons. p.24. ISBN 978-0-470-51241-8.

¹⁰Aggarwal, N (2009). "Rethinking suicide bombing". *Crisis*. 30 (2): 94–7. doi:10.1027/0227-5910.30.2.94. PMID 19525169.

¹¹Kazarian SH, Evans DR. Academic Press; 2001. *Handbook of Cultural Health Psychology*.

¹² McLaughlin, Columba (2007). *Suicide-related behaviour understanding, caring and therapeutic responses*. Chichester, England: John Wiley & Sons. P.24. ISBN 978-0-470-51241-8.

itself, as a personal and unassisted act. The act of suicide has not been criminalized in the penal law of the Islamic Republic of Iran.¹³

In Singapore¹⁴, Bangladesh and Pakistan, a person who attempts to commit suicide can be imprisoned for up to one year. In Japan it is illegal to attempt suicide but not punishable. Under section 309 of the Penal Code of Malaysia, whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.¹⁵ North Korea has a peculiar deterrent for suicides. Although the state cannot punish a dead person yet, in North Korea, relatives of a criminal (including a suicide victim) might be penalized.

In India, the scope of section 309, criminalizing attempt to suicide, is now as the mental health care act 2017, very limited.

IV. SECTION 309 IPC

Indian penal code drafted in 1860 on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833.¹⁶ As per the Indian penal code, 1860, chapter XVI of offences affecting the human body and of offences affecting life, section 309 deals with Attempt to commit suicide. It states that “whoever attempts to commit suicide and does any act toward the commission of such offence, shall be punished with simple imprisonment for a term which may extend to 1 year.”¹⁷ And by far has not been amended.

V. LEGISLATIVE HISTORY OF SECTION 309

It was in its 42nd report the Law Commission of India for the first time had recommended the repeal of Section 309 in 1971. 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, but before it could be passed by the Lok Sabha, the lower House was dissolved, and the bill lapsed.

¹³“Freewill termination: A look into psychological and legislative aspects of suicide in Iran”. *magiran.com* (in Persian). Retrieved 2016-06-06.

¹⁴*Singapore Penal Code* (Cap 224, Rev Ed 2008), s 309

¹⁵“Act 574 Penal Code” (PDF). *Attorney General's Chambers Website*. Retrieved 3 July 2015.

¹⁶John FR. *Praeger Publishers*; 2006. [Last cited on 2014 Dec 12]. *The History of British India: A Chronology*. Available from: <https://www.scribd.com/>

¹⁷*The Indian Penal Code, Act No 45. Ch. I. 1860*. [Last cited on 2014 Dec 11]. Available from: <http://www.districtcourttallahabad.up.nic.in/articles/IPC.pdf>.

In 1985, the Delhi High Court condemned section 309 of the Indian penal code as “unworthy of society.” The Supreme Court in 1994 even went on to call it “irrational and cruel and hence void.” It held that the right to life and liberty, under article 21 of the constitution, must also be interpreted to include the right to die.

But this was overruled a couple of years later by a five-judge constitutional bench of the apex court subsequently, who then reinstated the law in the judgment of GianKaur vs. state of Punjab in the year of 1996 . The commission then submitted its 156th report in 1997 after the Gian Kaur judgment, recommending retention of section 309.

However, the commission, in its 210th report, recommended that attempt to suicide warranted medical and psychiatric care and not punishment. In view of the opinions expressed by the WHO, International Association for Suicide Prevention, the Indian Psychiatric Society and the representations received by the commission from various persons, the commission resolved to recommend the government of India to initiate steps for repeal of the anachronistic law contained in section 309, IPC.

As law and order is a state subject, the central government requested the views of states/UTs on the recommendations of the law commission. Eighteen states and 4 UT administrations supported that Section 309 of the IPC may be deleted. Thus keeping in view the responses from the states/UTs, after on and off stand regarding this section by various law bodies like courts and law commissions for nearly three decades, it has been announced on December 10, 2014, to delete section 309 of IPC from the statute book.

Finally the mental health care act 2017 was passed limiting the scope of section 309 IPC with its section 115.¹⁸

VI.IMPORTANT CASES REGARDING SECTION 309 IPC

Section 309 has been the subject matter of challenge several times before the Supreme Court and High Courts.

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 in,

Maruti Sripati Dubal v. State of Maharashtra¹⁹

The petitioner, a police constable, who became mentally ill after a road accident attempted to commit suicide by dousing himself with kerosene and then trying to light a match was prevented and prosecuted under section 309 of I.P.C.

In 1987, the Division Bench of Bombay High Court struck down sec 309, I.P.C., as ultra vires vide article 14 and 21 of the constitution which guarantees ‘right to life and personal liberty’. The court said the ‘right to life’ includes ‘right to live’ as well as ‘right to end one’s life’ if one so desires. It was pointed out that that Fundamental Rights have positive as well as negative aspects. For example: Freedom of Speech and Expression also includes freedom not to speak and to remain silent. If this is so, logically it must follow that right to live as recognized by article 21 of the constitution also includes a right not to live or not to be forced to live.

Justice P.B. Sawant: “If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to understand how the same can be achieved by punishing those who have made the

¹⁸Supra note on Page 10

¹⁹1987 (1) BomCR 499, (1986) 88 BOMLR 589

attempts. Those who make the suicide attempt on account of mental disorder requires psychiatric treatment and not confinement in the prison cells where their condition is bound to be worsen leading to further mental derangement. Those on the other hand, who makes a suicide attempt on account of actual physical ailments, incurable disease, torture (broken down by illness), and deceit physical state induced by old age or disablement, need nursing home and not prison to prevent them from making the attempts again. No deterrence is going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or for self-deliverance. Thus in no case does the punishment serve the purpose and in some cases it is bound to prove self-defeating and counter – productive.

State v. Sanjaya Kumar Bhatia²⁰

In 1985, the Division Bench of Delhi High Court while acquitting a young boy who attempted to commit suicide by consuming ‘Tik Twenty’, held that “the continuance of section 309 of the Indian Penal Code is an anachronism unworthy of human society like ours. Instead of sending the young boy to a psychiatric clinic society, gleefully (happily) sends him to mingle with criminals. Medical clinics are needed for such social misfits; but police and prison never.”

In 1994, the Supreme Court held that section 309, IPC violates Article 21. It is held that ‘section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penallaws. 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 in the case of,

P. Rathinam v. Union of India²¹

The two petitioners assailed the validity of Section 309 by contending the same to be violative of Articles 14 and 21 of the Constitution and the prayer was to declare the section as void. The additional prayer was to quash the proceedings initiated against the latter petitioner under sec 309.

The Division Bench of Supreme Court comprising of Justices R.M. Sahai and B.L. Hansaria, approved the Judgment of Bombay and Delhi High Courts, but overruled the Andhra Pradesh High Court Judgment²² by contending that the Section 309 is violative of Articles 14 and 21 of the constitution.

While striking down Section 309, I.P.C., the Apex Court said ‘it is cruel and irrational provision violative of Article 21 of the constitution.’ Expanding the scope of Article 21, the court upheld that, ‘right to life’ include ‘right not to live a forced life’; i.e., to end one’s life if one so desires. The court went on to say that-“...it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy (humiliation) 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 not baneful effect on society. Further, suicide attempt to commit it causes no harm to others, because of which state’s interference with a personal liberty of the concerned person is called for.” The Court further said a person who attempts to commit suicide does not

²⁰1986 (10) DRJ 31

²¹1994 AIR 1844, 1994 SCC (3) 394

²²Chenna Jagadishwar v. State of A.P

deserve prosecution because he has failed. There can be no justification to prosecute sacrificers of their lives. For instance, students who jump into the well after having failed in examination but survive; girls and boys who resent arranged marriage and prefer to die, but ultimately fail, do not deserve punishment; rather soft words, wise counselling of a psychiatrist and not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor.

VII.CONSTITUTIONAL VALIDITY OF SECTION 309 IPC

Chenna Jagadishwar v. State of A.P²³

The Division Bench of Andhra High court upheld the constitutionality of section 309, I.P.C., and remarked that “right to life does not necessarily signify a right to die” which is an offence and therefore section 309 is not violative of Articles 19 and 21 of the constitution. It was also pointed out that the courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention. This, therefore does not violative of article 14.

A Constitution Bench of Supreme Court in Gian Kaur v. State of Punjab, overruled the decisions in MarutiShripatiDubal and P.Rathinam , holding that Article 21 cannot be construed to include within it the ‘right to die’ as a part of the fundamentalright guaranteed therein, and therefore, it cannot be said that section 309, IPC is violative of Article 21.

Gian Kaur v. State of Punjab[13]

In 1996, a five judge Constitutional Bench of the Apex Court comprising of Justices J.S. Verma, G.N. Ray, N.P. Singh, Faizuddin and G.T. Nanawati overruled its decisions of 1994 in P. Rathinam/ NaghbhusanPatnaik and upheld the constitutionality of Section 309.

The appellant and her husband were convicted by the Trial Court under Section 306, I.P.C. for abetting the commission of suicide by Kulwant Kaur. In special leave before the Apex Court the conviction of the appellant has been assailed (challenged), inter alia on the ground that Section 306 I.P.C.is unconstitutional in view of Judgment in 1944; wherein Section 309 I.P.C. has been held to be unconstitutional as violative of Article 21 of the Constitution. The Court while dismissing the petition held that the ‘right to life’ is inherently inconsistent with the ‘right to die’ as is ‘death’ with ‘life’. In furtherance, the right to life, which includes right to live with human dignity, would mean the existence of such a right up to the natural end of life. It may further include ‘death with dignity’ but such existence should not be confused with unnatural existence of life curtailing natural span of life. In progression of the above, the constitutionality of section 309 of the I.P.C. which makes “attempt to suicide” an offence, was upheld, overruling the judgment in P. Rathinam’s case.

The Apex Court further held that Section 306, I.P.C. as constitutional and said that ‘right to life’ does not include ‘right to die’. Extinction of life is not included in protection of life. The Court further went on to say that Section 306 constitute a distinct offence and can exist independently of Section 309, I.P.C. As regards Section 309, I.P.C. is concerned, 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,

²³Criminal Appeal No. 165 of 1987

I.P.C. or even abetment of suicide under section 306, I.P.C., are well within the constitutional mandated, and are not void or ultra vires. [14]

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 construe Article 21 to include within its ambit 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’.”

The 156th Report of the Law Commission, submitted in August, 1997, after the judgment of the Constitution Bench in Gian Kaur Case, recommended retention of section 309, IPC.

VIII.MAJOR ARGUMENTS REGARDING SECTION 309 IPC

Argument in favor of criminalization of attempting suicide	Argument against decriminalization of attempting suicide
<ul style="list-style-type: none"> • Moral right to die on account of terminal illness- Suicide is one of the ways in which people can exercise a right to die. Burn victims having severe injuries resort to and claim that they have a right to die of which any prevention of their intention to die is seen as a breach of their right to die because it seems impossible to recover from their suffering. • Losses and shameful acts- Suicide is morally right in the instance of losses or shameful acts like loss of limb or of physical beauty and the person is not in a position to give any meaning to his life, i.e., he is under the high level of depression, as no relief can be procured. • Liberty- To those who see man as a free agent, suicide is morally right. Man’s life belongs to him, hence he is at liberty to take it without denial; and no other person has the right to force their own ideals that life 	<ul style="list-style-type: none"> • Suicide is unhealthy approach to the problems of life- Most people who opt to die are somehow begging for help in order to solve the problems of life. “If a man really does not wish to live, then we think he must be insane, and unfit therefore, to decide his own fate. It becomes our duty to save him first to save his life and then to cure his melancholy.” The depressive situations occasioned by frustration, losses, shame, fear etc. are not enough to warrant ones to commit suicide. • Suicide degrades human worth- Kant and Mappes argue on the immoral nature of suicide, also that it degrades human worth. Granted that man is an image of God, he occupies a very special place in creation and to commit suicide reduces his nature below the level of animal nature hence man should abhor suicide.

<p>must be lived. Rather, only the individual involved can make such decision and whatever decision he or she does make, should be respected.</p> <ul style="list-style-type: none">• To save the life of more people- When a person refuses to give information to an enemy camp in order not to endanger the lives of other; killing himself is morally right.	<ul style="list-style-type: none">• Suicide is against the law of self-preservation- This argument proceeds from man's natural instinct of self-preservation so; killing oneself is a direct negation of this natural law of self. Hence, suicide is always contrary to the natural law and to charity whereby every man should love himself. Suicide is a terrible aberration which is diametrically opposed to a well ordered self-love and the natural instinct of self-preservation. Suicide seen as an escape from overwhelming personal disaster, evil, life misery, frustration, or dishonor, far from an act of fortitude, is an act of cowardice.• Suicide violates God's supremacy- This argument proceeds from the fact that God is the creator and Lord of life. The act of suicide opposes the very purpose of the creator.
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IX.LAW COMMISSION REPORTS

42nd law commission report on Indian penal code

It was in its 42nd report the Law Commission of India for the first time had recommended the repeal of Section 309.

156th Report of the Law Commission, submitted in August, 1997, after the judgment of the Constitution Bench in Gian Kaur Case, recommended retention of section 309, IPC.

18th Law Commission in its 210th Report

Report titled “Humanization and Decriminalization of Attempt to Suicide” recommended the following: The 18th Law Commission in its 210th Report titled ‘Humanization and Decriminalization of Attempt to Suicide’ submitted on October 17, 2008 gave the following recommendations:-

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 in his failure to commit suicide.

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2. The criminal law must not act with misplaced overzeal and it is only where it can prove to be apt and effective machinery to cure the intended evil that it should come into the picture.
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 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.

X.MENTAL HEALTH CARE ACT 2017

The Mental Healthcare Bill, 2016 is passed by the Parliament on Monday. The Bill repeals the existing Mental Health Act, 1987, which is vastly different in letter and spirit.

It limits 309 IPC upto a great extent while also keeping in view the valid arguments put forward regarding the need of preservation of section 309.

The Bill defines “mental illness” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence. Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards.

Section 115 provides:

- (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code;
- (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

The act thus, mandates that a person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code. The government shall have a duty to provide

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care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

XI.CONCLUSION

Attempt to suicide is no longer a criminal offence if induced by a mental illness as per the medical health care 2017 act which provides a rights based legislation towards the mentally ill people and is so far welcomed as meeting the requirements of the present scenario.

Also, the section 309 of the IPC has not been amended so far implying the state withholds the right to punish a person's suicide attempt if it is proved that it was driven by factors other than those provided by the Medical Health Care Act. This can be seen in the light of the arguments put forward by the states which advised in the preservation of section 309 when the central government asked for the same in 2014.