



IS THE REPULSION OF SECTION 309 (SUICIDE PROVISIONS) OF IPC IN THE BHARTIYA NYAYA SANHITA, 2023 JUSTIFIED?

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INTRODUCTION

Section 309¹ of the Indian Penal Code, 1860 prohibits both attempting suicide and aiding someone in attempting suicide. It prescribes punishment of a fine, up to a year in simple imprisonment, or both, for anyone who tries to commit suicide and takes steps towards it. It's important to clarify that while attempting suicide is illegal under Section 309, the act of suicide itself is not considered a crime. This distinction hinges on the presence of mens rea, or criminal intent, which is necessary for the offence outlined in Section 309. The public perception regarding Section 309 has been mixed, with some believing it to be unconstitutional based on decisions by the Supreme Court and legislative actions. There have been calls for its decriminalization, arguing that it violates individual rights². Section 309 remained in force until the enactment of the Mental Healthcare Act³ in 2017, which brought significant changes. This new law effectively decriminalized suicide by introducing provisions that prioritize mental health support and treatment over punitive measures for attempted suicide.

In summary, Section 309 of the Indian Penal Code historically classified suicide attempts as crimes, but legislative developments, notably the Mental Healthcare Act of 2017, have led to substantial reforms in this area.

The central government has introduced three new bills in Parliament aimed at reforming India's legal framework, including the Indian Penal Code (IPC). However, a new provision in the Bhartiya Nyaya Sanhita (BNS) 2023⁴ could potentially make attempting suicide illegal in India. Additionally, Section 309 of the IPC, which previously prescribed up to one year in prison for

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¹ Indian Penal Code 1860, s 309

² Khadija Khan, 'The new IPC removes the punishment for attempting suicide- or does it?' (Indian Express, 13 August 2023) <<https://indianexpress.com/article/explained/explained-law/new-ipc-removes-punishment-attempting-suicide-8889717/>> accessed 15 January 2025

³ Mental Healthcare Act 2017

⁴ Bhartiya Nyaya Sanhita 2023

those attempting suicide, was decriminalized under the Mental Healthcare Act. This change was driven by concerns about the stress such legal penalties could cause individuals in crisis.

HISTORICAL BACKGROUND

Survivors of suicide attempts may face charges under Section 309 of the Indian Penal Code, which addresses the topic of "Attempt to commit suicide." The prevalent belief at the time that both murder and suicide attempts were crimes against the state and religious standards was reflected in this law, which was implemented during the British colonial era in the 19th century.

The Law Commission suggested eliminating Section 309 of the IPC in its 42nd Report in 1971⁵.

However, unlike Section 309, the BNS Act 2023 does not consider the act of attempting suicide itself as a criminal act. Instead, under Section 224⁶ of the new act, suicide attempts made with the intention to obstruct or hinder a government employee from performing their formal duties are regarded as unlawful. According to Section 224 of the BNS Act, individuals who attempt suicide with the intention of coercing or obstructing a public servant from carrying out official duties may face penalties including imprisonment for up to one year, fines, community service, or a combination thereof.

This research paper seeks to explore the potential implications and challenges associated with repealing the previous law and to assess whether such a change is justified. Prime Minister Morarji Desai's Janata Party government introduced the IPC (Amendment) Bill⁷ in 1978. The Rajya Sabha approved it, but it expired when the Lok Sabha disbanded before it could be approved.

The Supreme Court's five-judge panel decided that IPC Section 309 was constitutional in the 1996 case of *Gian Kaur v. State of Punjab*⁸. In contrast, the Law Commission recommended in its 2008, 210th Report⁹ that medical and psychological support be used instead of punishment to treat suicide attempts.

⁵ Law Commission's 42nd Report 1971

⁶ *Bhartiya Nyaya Sanhita 2023*, s 224

⁷ Indian Penal Code (Amendment) Bill 1978

⁸ *Gian Kaur v State of Punjab* [1996] 2 SCC 648

⁹ Law commission's 210th Report

Furthermore, in March 2011, the Supreme Court suggested that Parliament take Section 309 of the IPC into consideration for repeal. 2018 saw the implementation of the Mental Healthcare Act (MHCA) of 2017, which represents a significant step forward. This law stipulates that attempted suicide should not be prosecuted under Section 309 of the IPC.

Section 115(1)¹⁰ of the MHCA states: "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." Moreover, Section 115(2)¹¹ of the MHCA mandates that the "appropriate government" must offer care, therapy, and rehabilitation to people who have made an attempt at suicide and are under a lot of stress in order to reduce the likelihood that they will make another attempt.

CONSTITUTIONALITY OF SECTION 309 IPC

There are differing opinions about whether Section 309 of the Indian Penal Code is constitutional. The Andhra Pradesh High Court and the Bombay High Court hold contrasting opinions on whether this section is legally valid.

The constitutionality of section 309 was first discussed by the Bombay High Court in the 1986 case of *State of Maharashtra v. Maruti Sripati Dubal*¹². In this instance, the Bombay High Court decided that the right to die, protected by Article 21 of the Indian Constitution, is violated by Section 309, which forbids attempted suicide. As a result, section 309 was declared unconstitutional by the court and overturned.

On the other hand, the Andhra Pradesh High Court's stance differed. In the case of *Chenna Jagdeshwar v. State of Andhra Pradesh*¹³ (1988), it held that section 309 of the IPC is constitutional. According to the court, the right to die is not a fundamental right under Article 21¹⁴.

In *P. Rathinam v. Union of India*¹⁵ (1994), a division bench of the Supreme Court decided the divergent views of these High Courts. The Bombay High Court's decision in *State of Maharashtra v. Maruti Sripati Dubal* (1986), which affirmed people's right to die and ruled that

¹⁰ Mental Healthcare Act 2017, s 115(1)

¹¹ Mental Healthcare Act 2017, s 115(2)

¹² *State of Maharashtra v Maruti Sripati Dubal* [1986] 88 Bom LR 569

¹³ *Chenna Jagdeshwar v State of Andra Pradesh* [1988] CR LJ 549

¹⁴ Constitution of India 1950, art 21

¹⁵ *P. Rathinam v Union of India* [1994] 3 SCC 394

section 309 was unconstitutional, was upheld by the Supreme Court. The petitioner in the case argued that section 309 was unconstitutional because it violated Articles 14¹⁶ and 21 of the Constitution.

The IPC's section 309 was found to be a harsh and capricious law by the court. The court upheld the Bombay High Court's ruling in *State of Maharashtra v. Maruti Sripati Dubal* (1986), as it was established that Article 21 offers protection from being forced to live as well. The Supreme Court's constitution bench ruled in *Gian Kaur v. State of Punjab* (1996) to elucidate the rights to death and the constitutionality of section 309 of the IPC, holding that Article 21 of the Constitution does not grant the freedom to murder or perish.

Justice J.S. Verma asserts that suicide is an artificial method of taking one's own life, and as such, it is irreconcilable and incongruous with the concept of the right to life. On the other hand, Article 21 embodies the natural right to life. The court decided that such a right would exist up until the point of natural death and that this encompassed the right to a dignified life. It is important to distinguish between the right to an unnatural death that reduces one's normal life expectancy and the right to die with honour. Considering this, the court decided that Article 21 of the constitution is not violated by section 309 of the IPC.

In the *State of Maharashtra V. Maruti Sripati Dubal* (1986), the Supreme Court reversed the Bombay High Court's ruling. The court also affirmed the ruling in *Chenna Jagdeshwar v. State of Andhra Pradesh* (1988) by the Andhra Pradesh High Court, which found section 309 of the Indian Penal Code to be constitutional. Section 309 of the Indian Penal Code is therefore obviously unconstitutional and does not contravene Articles 14 and 21 of the Indian Constitution.

LEGAL CHANGES IN THE BHARTIYA NYAYA SANHITA BILL, 2023

Several provisions in the Indian Penal Code (IPC), 1860, are questionable. Section 309, which criminalises attempting suicide, is one such clause. The Bharatiya Nyaya Sanhita (BNS) that is being presented does not contain this clause. One of the IPC's oldest clauses, it has long been questioned and was essentially made redundant by a 2018 statute that was passed by Parliament. Therefore, because it remains a part of the Code, it can be exploited.

What is stated in the IPC Section 309?

¹⁶ Constitution of India 1950, art 14

The Section imposes a prison sentence and/or fine on anyone who attempts suicide, which is typically seen as a last resort for seriously troubled individuals. Section 309 of the IPC says:

"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."¹⁷

The British law, which was passed in the 19th century, reflected the mentality of the time, when attempting suicide or killing oneself was considered a crime against the state and religion.

The National Crime Records Bureau of India reports that 1,64,033 people died in India between 2020 and 2021 because of suicide, an increase of 7.2%¹⁸.

Over one lakh Indians commit suicide each year, according to data gathered by the NCRB from police reports on recorded suicide cases.

They were reportedly charged under IPC Section 309, according to the local media.

According to multiple high-ranking law enforcement authorities, police station officers frequently adhere more closely to the Indian Penal Code than the relatively new Mental Healthcare Act. In 2020, The Indian Express quoted Harsh Poddar, the Superintendent of Police in Beed, Maharashtra, who stated that charges under Section 309 are often dismissed later on following conversations with higher ranking authorities.

Does this chapter finally come to an end with the section removed from the proposed BNS?

The new Bill does not completely decriminalise the offence of attempting suicide, even though it appears to remove this section from the statute books.

Thus, the proposed BNS Section 224 reads: "Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service."¹⁹

¹⁷ Indian Penal Code 1890, s 309

¹⁸ 'What the new criminal law says on unnatural sex and adultery' (Firstpost, 14 August 2023) <<https://www.firstpost.com/explainers/what-the-new-criminal-law-says-on-unnatural-sex-and-adultery-12993912.html>>

¹⁹ Bhartiya Nyaya Sanhita 2023, s 224

In essence, this gives the provision a twist.

- "Suicide attempts that are made in an attempt to prevent a public servant from acting are still illegal."²⁰

A protester attempting self-immolation to prevent police from detaining other demonstrators could serve as an example.

In addition, community service is a form of punishment permitted by Section 224 of the proposed BNS, whereas Section 309 of the IPC prohibits it.

What other provisions address mental health and suicide-related issues are included in the proposed new laws?

The proposed BNS contains a few sections that penalise aiding and abetting suicide.

Section 106 states: "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment... [up] to ten years and shall also be liable to fine."²¹

Section 105 further states: "If any person under eighteen years of age, any person with mental illness, any delirious person or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."²²

A section on suicide is included in the Bharatiya Nagarik Suraksha Sanhita, 2023, which aims to replace the Code of Criminal Procedure, however, it does not treat it as a crime. Among other things, the proposed BNSS's Section 194 deals with the police's ability to look into and record suicides.

The proposed BNSS's Sections 367–369²³ outline the criminal process in situations where the mental illness of the accused, the person being tried in court, and the release of mentally ill individuals pending investigation or prosecution.

²⁰ Ibid

²¹ Bhartiya Nyaya Sanhita 2023, s 106

²² Bhartiya Nyaya Sanhita 2023, s 105

²³ Bhartiya Nagarik Suraksha Sanhita 2023, s 367-369

Section 376²⁴ of the proposed BNSS describes the process for reporting a mentally ill prisoner as capable of presenting a defence. The procedure for deciding whether to release a mentally sick prisoner is covered in Section 377²⁵, and the transfer of mentally ill people to a friend or relative for care is covered in Section 378²⁶.

IS REPULSION OR DECRIMINALISATION JUSTIFIED OR NOT?

JUSTIFICATION-

According to the lawmakers and several thinkers, suicide provisions that are repealed in the new bill are justified because of the following reasons-

- Decriminalising and repealing suicide attempts will make it possible to gather statistics on suicide more accurately while also assisting in the reduction of stigma and avoidance of punishment following an incident.
- According to research, mental illness is a major contributing factor to non-fatal suicide behaviour. Depression and other mental diseases are associated with an increased incidence of non-fatal suicide attempts in both adults and children. Additional risk factors include stressful life events like losing a loved one, a job or relationship, financial ruin, looming criminal prosecution, and, if you've recently received a terminal illness diagnosis, actually having one. Factors may also include adversities including drug or alcohol abuse, as well as physical or sexual assault.
- In most cases, people who attempt suicide need assistance rather than punishment due to the high risk of mental or psychological disorders. The limits of an individual's right to life and death have been examined, but mostly unresolved, across a variety of fields and perspectives.
- According to the World Health Organisation, suicide is no longer illegal in 59 nations worldwide. It is now lawful to attempt suicide in most of Europe, North America, South America, and some regions of Asia²⁷. In common law jurisdictions, decriminalisation of suicide attempts occurred comparatively late. Similarly, compared to continental Europe or the Scandinavian region, where doctors are free to certify suicidal deaths

²⁴ Bhartiya Nagarik Suraksha Sanhita 2023, s 376

²⁵ Bhartiya Nagarik Suraksha Sanhita 2023, s 377

²⁶ Bhartiya Nagarik Suraksha Sanhita 2023, s 378

²⁷ 'Bhartiya Nyaya Sanhita: Will attempt to suicide be punishable under BNS Bill 2023?' (DNA 14 August 2023)

without the involvement of legal authorities, these countries have much higher rates of coroners and legal systems participating in suicide certification.

- Primarily, individuals who have attempted suicide are deprived of the necessary emotional and mental health support because most attempted suicides are reported to the authorities as accidental. If the offence is decriminalised, patients and their families will have greater access to open mental health care after an attempt. From a societal perspective, decriminalisation is a more compassionate and considerate approach to addressing the issue than prosecution. Additionally, it will support the development of more precise epidemiological data on suicidality and better reporting practises. The criminalization of suicidal acts turns suicide into a hidden problem and makes it more difficult for those who are suicidal to get the assistance they require. More precise and up-to-date data can aid in more effective resource allocation and planning for suicide prevention initiatives.

ARGUMENTS OPPOSING THE DECRIMINALISATION

1. The first primary justification stems from the theological notion that any attempt to end one's own life should be viewed as a malevolent act since only God has the power to decide when a person's life should end. Religions from all around the world have historically forbidden suicide. Many ethnic communities do not remember suicide fatalities by performing customary funeral ceremonies. Suicide is not regarded in Hinduism as a way to achieve moksha or salvation. Suicidal deaths are often associated with negative outcomes, such as social disgrace and shame for the family.

2. The belief that criminalization can deter future attempts is another significant argument in favour of criminalization. It is still unclear, though, whether or not laws permitting the prosecution of suicide attempts have a deterrent effect. Although there isn't much information about Section 309 in India, a sizable portion of the population is aware of it and isn't deterred from trying suicide. In a research study of 200 attempted suicides in a general hospital emergency room, 46.2% of men and 26.6% of women knew about the law before making an attempt on their lives²⁸.

RECOMMENDATIONS

²⁸ 'BNS Bill 2023 proposes multiple changes in existing IPC provisions' (The Print, 12 August 2023) <<https://theprint.in/india/bns-bill-2023-proposes-multiple-changes-in-existing-ipc-provisions/1711621/>> accessed 15 January 2025

In the direction of treating people who attempt suicide with greater compassion, the Indian Penal Code's Section 309 was removed. Still, there are some issues with how the complicated problem of mental health and suicidal thoughts is handled. To maximize the efficacy of this legal reform, comprehensive mental health support systems, such as easily accessible counseling services and crisis intervention, must be established. Furthermore, it is imperative that public awareness campaigns de-stigmatize mental health issues in order to empower people to seek help without fear of being judged. Lawmakers ought to think about creating and executing training initiatives for law enforcement staff in order to make them more aware of the subtleties associated with mental health emergencies. Furthermore, there have to be clear criteria for reporting and documenting suicide attempts in order to ensure accurate records and facilitate the provision of necessary mental health care. Together, legislative initiatives ought to concentrate on developing a strong legal framework for euthanasia that clarifies end-of-life options and includes precautions against possible misuse. The legal system can better reflect our growing understanding of mental health and suicide prevention by addressing these issues.

CONCLUSION

Examining how the Indian Penal Code's Section 309 repeal has changed the country's legal position on suicide and how that has affected euthanasia, it is clear that a paradigm change is taking place. The repeal moves away from punitive measures toward empathy and support, reflecting an understanding of the complex dynamics surrounding mental health and suicide attempts. Nonetheless, there are still issues, such as the requirement for improved mental health services and the need to guarantee euthanasia laws are clear. It is clear from examining global comparisons that ethical, cultural, and legal aspects of the euthanasia debate must be carefully taken into account. The cases under discussion show a progression from challenging the constitutionality of criminalizing suicide attempts to restating the government's authority to control them. It is imperative to address the socioeconomic factors that contribute to suicide and promote mental health support in order to genuinely cultivate a compassionate society. In summary, although India has made progress, more needs to be done in terms of legislation, raising public awareness of mental health issues, and providing law enforcement training in order to ensure that the legal system keeps pace with our growing knowledge of mental health and end-of-life choices.

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