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## Decriminalisation of Attempts to Commit Suicide in Bhartiya Nyay Sanhita: A Boon or A Bane?

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*The Bhartiya Nyaya Sanhita<sup>1</sup> has brought forth a couple of changes while replacing the Indian Penal Code<sup>2</sup>. Amongst which decriminalisation of suicide has gained much importance and attention. In the following article, we have dealt with what attempts were made previously to decriminalise attempts to commit suicide and the flow of these events. Several cases have put forth remarkable insights. These cases have been touched upon and their essence has been briefly mentioned in the following article. In short, we have turned to sources that look at history; having a glance at previous efforts to legalize euthanasia and assessing rulings of certain tiers of the judiciary. This is then continued by the critical evaluation and arguments for both, in favour as well as against, this major but much-needed change in Bhartiya Nyaya Sanhita, 2023. We have also evaluated the plausible reasons that would have led to this step and concluded with the initiatives that India has taken and can take in the future taking into regard the World Health Organisation brief.*

**Keywords:** *decriminalization, suicide, right to die.*

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<sup>1</sup> Bhartiya Nyaya Sanhita 2023

<sup>2</sup> Indian Penal Code 1860

## INTRODUCTION

The Bhartiya Nyaya Sanhita has introduced some remarkable changes amongst which decriminalisation of suicide attempts has been in discussions and debates. Initially, Section 309<sup>3</sup> criminalized suicide, which meant that a person who attempted to commit suicide was to be imprisoned. Statistics in India show a very concerning figure in India when it comes to suicide. The National Crime Report Bureau in its 2022 report illustrated that there has been an increase in suicide rates by 4.2% (170,924 recorded cases in total) which has been the highest in the last 56 years.<sup>4</sup>

‘Suicide’, in simple terms, refers to ‘harmful behaviour that is inflicted on one’s self that results in death’. This is in turn done to do away with one’s life when they have lost the willingness and hope to live. A suicide attempt, on the other hand, is a potentially harmful, nonfatal self-directed behaviour that may or may not result in death. A suicide attempt could or might not end in harm. There are numerous reasons for which people of numerous age groups attempt suicide which range from financial to mental.

In India, attempted suicide has long been considered a criminal offence under section 309,<sup>5</sup> which was written during the colonial era. Therefore, under this section, whoever attempts suicide may be imprisoned, if not imposition of fines. One of its drawbacks is that the people who need help, support, and care and are emotionally vulnerable are subjected to more emotional harassment. Even though attempted suicide is not considered a crime under the Mental Healthcare Act 2017 (MHCA)<sup>6</sup>, section 309<sup>7</sup> is still in effect. This had initially caused misunderstanding regarding the relationship between the above two mentioned provisions. But a revolutionary change approached with the Bhartiya Nyaya Sanhita 2023 (BNS)<sup>8</sup>. There are no longer any clauses in this new statute that make attempting suicide illegal.

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<sup>3</sup> Indian Penal Code 1860, s 309

<sup>4</sup> Nandini Singh, ‘India records 171,000 suicides in 2022, highest ever: NCRB report’ *Business Standard* (12 July 2024) <[https://www.business-standard.com/india-news/india-records-1-71-lakh-suicides-in-2022-highest-ever-ncrb-report-124071100839\\_1.html](https://www.business-standard.com/india-news/india-records-1-71-lakh-suicides-in-2022-highest-ever-ncrb-report-124071100839_1.html)> accessed 08 September 2024

<sup>5</sup> Indian Penal Code 1860, s 309

<sup>6</sup> Mental Healthcare Act 2017, s 115

<sup>7</sup> Indian Penal Code 1860, s 309

<sup>8</sup> Bhartiya Nyaya Sanhita 2023

## **THE EARLIER STATUTORY PROVISIONS**

According to Section 309<sup>9</sup>, an individual shall be held accountable under this provision if they attempt suicide and carry out any act in furtherance of the attempt, i.e., to commit an offence. The crime of taking a precious human life too soon or against nature is this one. This provision stipulated that the maximum penalty for simple imprisonment was one year, alternatively, there might be a fine. The offence fell into three categories: cognisable (where a police officer has the power and authority to arrest an accused without a warrant), bailable (where bail can be granted upon the deposit of necessary documents), and non-compoundable (where the offence cannot be resolved on simpler terms).

This section's primary elements are: First, the suicide attempt had to have failed since if the conduct is effective, there cannot be an offender. Furthermore, the endeavour needs to be deliberate. It can't be an error or an incident. It must be obvious that the goal is to destroy oneself. The placement of this section under Chapter XVI draws criticism as this section continues to be an exception in this chapter as it talks about harming itself while the rest talk about harming another body.<sup>10</sup>

This section's primary goal was to discourage people from committing suicide, hence, reducing its number in India as the State should safeguard its people against harm of any kind. The NCRB's data indicates a consistent rise in the number of recorded suicide attempts in prior years, demonstrating the evident failure of this section to achieve its intended goals.<sup>11</sup>

## **CASES LEADING TO DECRIMINALISATION**

The strive to decriminalise suicide attempts began long back. We will look into them in a sequential format to have a better understanding. It all began in 1971 from the 42<sup>nd</sup> Law Commission Report which put forth the proposal to exclude the offence of attempting to commit

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<sup>9</sup> Indian Penal Code 1860, s 309

<sup>10</sup> Jasmine Madaan, 'Decriminalization of Attempt to Commit Suicide: A Guide of 15 Decades' (*iPleaders*, 07 May 2020) <<https://blog.iplayers.in/decriminalization-attempt-commit-suicide-guide-15-decades/>> accessed 08 September 2024

<sup>11</sup> Oishika Banerji, 'All about Section 309 of the Indian Penal Code, 1860' (*iPleaders*, 19 February 2022) <<https://blog.iplayers.in/all-about-section-309-of-the-indian-penal-code-1860/>> accessed 11 January 2025

suicide.<sup>12</sup> This led to an upsurge of numerous discussions and a bill was passed for the same in 1978 but failed to fulfil the goal as it happened to lapse due to the change in government.<sup>13</sup>

This was followed by the case of *State v Sanjay Kumar Bhatia*.<sup>14</sup>, in 1985 where the Delhi High Court expressed its opinion that Section 309 of the IPC should be decriminalized, meaning that it should be removed from the statute. It was declared ‘unworthy of society’ by the court.

For the first time, the Bombay High Court examined whether the right to die could be incorporated into the definition of the right to life in one of the leading causes of the *State of Maharashtra v Maruti Satpati Dubal* (1987)<sup>15</sup>. The court noted that all attempts to dissuade suicide by punishing the individual who has tried suicide are futile. According to the court, putting someone in jail will only make their level of mental or physical suffering worse because they have already experienced enough physical or psychological suffering. Instead, medical care and attention are needed. Consequently, the court declared that Article 21 (Right to Life and Personal Liberty)<sup>16</sup> includes the right to die and declared that Section 309 of the Indian Penal Code<sup>17</sup> is unconstitutional because it breaches Articles 14 (Right to Equality)<sup>18</sup> and 21 (Right to Life and Personal Liberty).<sup>19</sup>

A year later, in contrast, the Andhra Pradesh High Court maintained the legality of Section 309 of the IPC in the *Chenna Jagadeshwar v State of Andhra Pradesh*<sup>20</sup>. In the same case, it was also declared that Section 309 does not violate Articles 19 and 21 of the Indian Constitution and that the right to life<sup>21</sup> does not include the right to die.<sup>22</sup> In *P. Rathinam v Union of India*<sup>23</sup> (1994), a two-judge Supreme Court recognised the inconsistency between Section 309 of the Indian Penal

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<sup>12</sup> Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System* (Law Commission of India, 2003) para 16.31, 16.32, 16.33

<sup>13</sup> Khadija Khan, ‘The ‘new IPC’ removes the punishment for attempting suicide — or does it? Here’s what the proposed Nyaya Sanhita says’ *The Indian Express* (New Delhi, 13 August 2023) <<https://indianexpress.com/article/explained/explained-law/new-ipc-removes-punishment-attempting-suicide-8889717/>> accessed 8 September 2024

<sup>14</sup> *State v Sanjay Kumar Bhatia* (1985) Cr LJ 931

<sup>15</sup> *State of Maharashtra v Maruti Satpati Dubal* (1987) Cr LJ 743

<sup>16</sup> Constitution of India 1950

<sup>17</sup> Indian Penal Code 1860, s 309

<sup>18</sup> Constitution of India 1950

<sup>19</sup> Constitution of India 1950

<sup>20</sup> *Chenna Jagadeeswar v State of Andhra Pradesh* (1988) Cr LJ 549

<sup>21</sup> Constitution of India 1950

<sup>22</sup> Jaimithra, ‘Decriminalized Crime in India: Suicide’ (*iPleaders*, 22 October 2019)

<<https://blog.iplayers.in/decriminalized-crime-india-suicide/>> accessed 08 September 2024

<sup>23</sup> *P Rathinam v Union of India* (1994) 3 SCC 394

Code and Article 21 of the Indian Constitution. The Delhi and Bombay High Courts and the Andhra Pradesh High Court's positions that Section 309 of the Indian Penal Code is unconstitutional because it breaches Articles 14 and 21 of the Indian Constitution were both backed and affirmed by the court. The clause was deemed *cruel and irrational* by the court.

It was intended to end the suffering of the accused twice. When someone tries suicide, they are already in pain agony, and anxiety, punishing them will only make it worse because this will force them to suffer through the pain twice. Since the accused is the only one harmed and the state's intervention in an individual's personal life is unjustified, the accused bears the brunt of the consequences. If a student who is under academic pressure tries suicide but is unsuccessful, then it is obvious that they should not be treated cruelly by a prosecutor or even penalized. Instead, they should receive support in the form of counselling or encouraging words. In this, the court contended that the 'Right to life' does include the 'right to not live a forced life'.

In the 1996 case of *Smt. Gian Kaur v State of Punjab*<sup>24</sup>, the ruling of P. Rathinam was overturned by a five-judge Supreme Court bench. The question posed in this case was whether, in light of P. Rathinam's ruling, Section 309, which deals with suicide attempts, is unconstitutional.<sup>25</sup>

The Supreme Court has held that the 'right to die with dignity' is a part of the 'right to life',<sup>26</sup> But this right should occur naturally. The court emphasized that this right does not extend to the right to actively end one's life. The court upheld Section 309,<sup>27</sup> which criminalizes attempted suicide. It clarified that the right to life under Article 21 of the Indian Constitution<sup>28</sup> does not imply the right to take one's own life.

The 2011 case *Aruna Ramchandra Shanbaug v Union of India & Ors*<sup>29</sup> is historic because it authorized suicide assisted by passive euthanasia in certain situations and established wide guidelines for the practice in India. The distinction between active and passive euthanasia was further elucidated by the court.<sup>30</sup> If the patient is unable to give consent or does not have a living

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<sup>24</sup> *Smt. Gian Kaur v State of Punjab* (1994) 3 SCC 394

<sup>25</sup> Jaimithra (n 24)

<sup>26</sup> Constitution of India 1950

<sup>27</sup> Indian Penal Code 1860, s 309

<sup>28</sup> Constitution of India 1950

<sup>29</sup> *Aruna Ramchandra Shanbaug v Union of India & Ors* (2011) 3 SCC 1

<sup>30</sup> Rajeew Ranjan et al., '(De-) criminalization of attempted suicide in india: A review' (2014) 23(1) Industrial Psychiatry Journal <[https://www.researchgate.net/publication/270005608\\_De-criminalization\\_of\\_attempted\\_suicide\\_in\\_India\\_A\\_review](https://www.researchgate.net/publication/270005608_De-criminalization_of_attempted_suicide_in_India_A_review)> accessed 23 January 2025

will, only their parents, spouses, close relatives, or close friends may decide to remove life support. According to the court, death by passive euthanasia is a dignified way to die away. Once more, the Indian Constitution's Article 21<sup>31</sup> upholding the Right to die with dignity is a part of the concept of the 'Right to Life'.

A constitutional bench considered the unsettling and differing rulings in *Smt. Gian Kaur v State of Punjab* and *Aruna Ramchandra Shanbaug v Union of India & Ors* in the case of *Common Cause v Union of India*.<sup>32</sup> (2018). It permitted the creation of a living will, which is a document in which the terminally ill individual expresses his or her wishes for medical care if they are unable to grant consent. The court ultimately confirmed that, following the Indian Constitution, the 'Right to Die with Dignity' is a part of the fundamental rights.

Currently, before the BNS was passed by legalising suicide attempts, the Centre has moved from a viewpoint that is legal to one which is more medical. The Mental Healthcare Act 2017<sup>33</sup>, which superseded the previous Mental Health Act 1987<sup>34</sup>, has altered India's legal framework regarding suicide attempts. The bill was approved by the Rajya Sabha on August 8, 2016, and the Lok Sabha on March 27, 2017. On April 7, 2017, the president signed the Mental Healthcare Act 2017.

Section 115 is the most significant section, which provides that:

*Any person who attempts to commit suicide shall be presumed to be under severe stress and not be tried and punished under section 309 or any other section of the Indian Penal Code unless otherwise proved.*

*the appropriate government must take care, of and provide adequate treatment and rehabilitation to anyone who attempts to commit suicide due to severe stress. The purpose is to reduce the risk of reoccurrence of an attempt to commit suicide by the individual.*<sup>35</sup>

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<sup>31</sup> Constitution of India 1950

<sup>32</sup> *Common Cause (A Regd Society) v Union of India* (2018) 5 SCC 1

<sup>33</sup> Mental Healthcare Act 2017

<sup>34</sup> Mental Health Act 1987

<sup>35</sup> Mental Healthcare Act 2017, s 115

It says that people with mental illness should get the same medical care as those with physical illnesses. It also says that it's wrong to treat people differently because of their mental health. Everyone has the right to a good and respectful life, no matter what.

## **ADVANTAGES AND DRAWBACKS**

The primary driving force behind this significant action was the realization that punishing someone who tries suicide only serves to exacerbate the agony and mental torture they are already experiencing. Suicide attempts are typically the result of mental illness and dark pain. The court feels that rather than subjecting someone to a gruelling trial and punishment process, rehabilitation facilities should be made available to them if they have attempted suicide but failed.

The action has allowed the victims to move on from their legal troubles and give life another chance to shield a victim who is already deeply affected psychologically and emotionally from more harassment. It is a sad but widely held idea that every suicide victim is mentally ill and has given up on all hope and expectations for a better life. Making suicide attempts illegal contributes to a culture that stigmatizes suicidal ideas and dissuades people from seeking and consulting professional assistance. Another troubling impact is that it deters others from reporting similar incidents of the threat of social stigma and even legal and societal impacts. As a result, this makes it more difficult to collect the precise data needed to develop initiatives meant to stop suicide. In this perspective, the BNS's explicit decriminalization of attempted suicide is a step in the right direction toward de-stigmatizing suicides and attempted suicides.

This new Sanhita decriminalises suicide completely including its attempts. This completely gets rid of section 309 of IPC.<sup>36</sup> However, the aspect where suicide is attempted to prevent a public servant from fulfilling their duty continues to remain an offence as before.

*Section 224: 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 a fine or with both or with community service.<sup>37</sup>*

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<sup>36</sup> Indian Penal Code 1860, s 309

<sup>37</sup> Bhartiya Nyaya Sanhita 2023, s 224

This is most likely the result of the government's attempts to stop hunger strikes and self-immolation. In 2014, 22 states and union territories were found to be in favour of repealing Section 309<sup>38</sup> In response to the proposition raised in the Rajya Sabha. Five states, on the other hand, disagreed, arguing that Section 309 should stay in place.<sup>39</sup> Their motivations ranged from wanting to teach those undertaking hunger strikes a lesson to being concerned about preventing future sacrifice bombing instances. One thing to note is that community service is offered under this portion of the BNS as a substitute for jail time or fines, meaning it is a less harsh form of punishment.

Removing section 309<sup>40</sup> should, in practice, mean that attempted suicides won't require registration as medico-legal cases. The Ministry of Home Affairs must give police and frontline staff precise instructions about the decriminalisation of attempted suicide and its effects on medicolegal cases to facilitate the process of decriminalisation. Improving first responders' knowledge and abilities to offer emergency psychosocial care is also crucial.<sup>41</sup> The police, emergency medical personnel, mental health professionals, peer support, and other people who come into contact with people who are suicidally inclined are examples of these first responders. Teaching police officers about the decriminalisation of attempted suicide and the significance of connecting those who have made such an attempt to the right kind of medical attention is equally vital. Strong procedures for prompt referrals, evaluations, and both short- and long-term treatment can greatly support efforts to prevent suicide.

This strategy might lessen the likelihood that the police will become involved unnecessarily in cases when their intervention is not necessary. It would be imperative that the Ministry of Home Affairs issue detailed guidance regarding the proper protocol for treating attempted suicide abetments in such cases.

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<sup>38</sup> Indian Penal Code 1860, s 309

<sup>39</sup> 'Decriminalising attempted suicide in India: the new penal code' (*India Mental Health Observatory*) <<https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/>> accessed 08 September 2024

<sup>40</sup> Indian Penal Code 1860, s 309

<sup>41</sup> Decriminalising attempted suicide in India: the new penal code (n 39)



## CONCLUSION

Currently, the National Crime Records Bureau (NCRB) provides yearly reports on suicide numbers from the Ministry of Home Affairs. Even while it is commonly known that underreporting undoubtedly contributes to these figures' underestimation of the true problem's scale, they nevertheless provide important information about the prevalence, distribution, and causes of suicide in our nation.

A more effective way is to be devised to record and document the number of attempted suicides since, the new provision has decriminalized it, leading to no noting down of these incidents. It is critical to accurately and thoroughly record suicide fatalities to better understand the problem, develop focused preventative initiatives, and provide crisis help to individuals who need it. Researchers working on suicide prevention, legislators, and mental health advocates will find this database to be a useful resource. In India, initiatives are also being made to improve community monitoring to address the issue of underreporting suicides and suicide attempts.

There is more to decriminalizing attempted suicide than just changing the law. The World Health Organization (WHO) has also contributed to the same cause by putting forth a policy brief. This brief provides a more comprehensive roadmap in addition to advocating for the repeal of laws that criminalize attempted suicide. It recommends putting in place a post-decriminalization awareness and training program for different stakeholders for suicide prevention.<sup>42</sup>

The WHO brief also advocates for the creation of a plan dedicated to preventing suicide nationally. The duty of police officers and medical professionals needs to be reevaluated in light of the National Suicide Prevention Strategy that India has published and the upcoming decriminalization of suicide. Additionally, specific operational guidelines need to be devised. In this context, initiatives are in progress. In Chhattisgarh, the Contact and Safety Planning project aims to reduce suicide rates among individuals who have attempted suicide by providing training to nurses and community health officers. In Odisha, the STRIDE project collaborates with law enforcement agencies, including the police, to enhance suicide prevention efforts. Additionally, the brief advocates for the inclusion of suicide rates in health data as opposed to criminal

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<sup>42</sup> "Training manual for surveillance of suicide and self-harm in communities via key informants" (*World Health Organization*, Geneva, 2022) <<https://iris.who.int/bitstream/handle/10665/365481/9789240065628-eng.pdf?sequence=1>> accessed 08 September 2024

statistics. It then offers recommendations for creating community-based mental health care. Non-coercive and rights-based therapies must be given priority in these programs to guarantee that people get the care they need.

It's critical to acknowledge that the Bhartiya Nyaya Sanhita's passing and enactment represent a critical turning point in the decriminalization process. But for it to be successful, everyone involved must work together to put the WHO's recommendations into practice. By doing this, we can help both the legislative change and the larger shift toward a suicide prevention strategy that is more successful.