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## RESEARCH OBJECTIVES

### **A CRITICAL STUDY OF SECTION 309 OF IPC: ATTEMPT TO SUICIDE**

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- To ascertain essential ingredients of Section 309 of IPC.
- To study about the constitutional validity of Section 309 through past judgements.
- To examine the previous attempts made to change Section 309.
- To ascertain the status of hunger strikes and santhara as instances of attempt to suicide.
- To analyse the arguments advanced in favour and against of decriminalization of attempt to suicide.

## **ABSTRACT**

Despite the fact that attempted suicide is a severe condition that necessitates mental health treatment, it remains a criminal offence under Section 309 of IPC. The research paper examines essential ingredients of Section 309, ascertains the constitutional validity of the section, examine the attempts made to change Section 309, addresses the implications of section 309 of the Indian Penal Code, and emphasises the need for attempted suicide to be decriminalised in India. Suicide attempt decriminalisation will help to reduce stigma and avoid punishment in the aftermath of an incident, as well as allow for more accurate suicide-related statistics to be collected. From a policy perspective, it will further emphasize the urgent need to develop a framework to deliver mental health services to all those who attempt suicide.

**KEYWORDS:** decriminalisation, attempt to suicide

## **RESEARCH QUESTION**

Whether Section 309 of Indian Penal Code, 1860 should be de-criminalized?

## **INTRODUCTION**

Life is a stage with one entrance but many exits. Suicide is one among these exits which has a very long history. The World Health Organisation in the year 1968 defined suicidal act as "*the injury with varying degree of lethal intent*" and the suicide as "*a suicidal act with fatal outcome.*" Suicidal acts which have a non-fatal outcome are known as "*attempted suicide.*" The cases of attempted suicide are 20 times more common than actual suicide. Study shows that those who attempt for suicide, 1/3<sup>rd</sup> of them repeat their behaviour within a year and approximately 10% of them eventually commit suicide. Most countries of the world do not recognize "*attempt to suicide*" as a punishable offence but India continues to do so.

In India, as per Section 309 of IPC,<sup>42</sup> "*attempt to suicide*" is a punishable offence. There are conflicting opinions with regard to retaining of Section 309. Some are in favour of retaining of Section 309 while some are in against of it. Even the Courts are divided on this issue. Those in favour of retaining Section 309 are of the opinion that "*Right to Life*" as per Article 21 does not include "*Right to Die*" and moreover, life is a precious gift given by God, the dignity of which needs to be upheld. Therefore, Section 309 should be retained while those who are in

<sup>42</sup> SECTION 309, Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).



against of Section 309 are of the opinion that it is cruel and irrational as it provides double punishment. It punishes the depressed and unhappy persons who try to relieve them from all the sufferings by ending their lives. The Mental Healthcare Act, 2017<sup>43</sup> limits the scope of Section 309. It does not expressly repeal the Section 309 but limits its operation by excluding the persons who committed attempt to suicide under severe stress. This Research Paper attempts to discuss about Section 309 of IPC, its constitutional validity, changes happened from time to time, arguments in favour and against of it. At last, the researcher will critically analyse 'Whether Attempt to Suicide should be decriminalised?'

### **SECTION 309 OF INDIAN PENAL CODE, 1860**

The word 'suicide' has not been defined anywhere in the Indian Penal Code, 1860. However, 'suicide' can be termed as the human act of self-inflicted, self-intentioned cessation of one's own life. It is an intentional act of taking one's own life. Only 'attempt to suicide' has been recognized under Indian Penal Code, 1860. Under IPC, as per Section 309, 'attempt to suicide' is punishable in nature. The Section 309 is based on the principle that lives of individuals are not only precious and valuable to them but also to the State which protects them.

### **SECTION 309<sup>44</sup>- ATTEMPT TO SUICIDE:**

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

### **Essential Ingredients of Section 309:**

1. Accused must do any act towards commission of suicide;
2. Act must amount to an attempt;

3. The presence of satisfactory evidence of suicidal intent is always necessary. It is required so as to establish suicide as a cause of death.

The attempt must be intentional in nature. There should be a conscious effort. In the case of '*Emperor v. Dhirajia*',<sup>45</sup> After a quarrel, a woman's husband threatened to beat her. Fearing for her child's safety, the mom escaped with her 6-month-old infant. When she turned around, she saw her husband pursuing them. The mother and her baby rushed into a well in a panic, and the baby died, but the woman survived. She was charged with attempted suicide. The court ruled that in order to be convicted under this clause, the "attempt" must be made with the intent to kill oneself.

A person would not be guilty under Section 309 if at the time of attempting to commit suicide, he/she due to unsoundness of mind or insanity is incapable of knowing the nature of act or did not know that what he/she was doing was wrong. An attempt to commit suicide made by mistake is not punishable in nature. Thus, if a person by mistake or under the state of intoxication takes the overdose of poison then he is not punishable under Section 309 of IPC. Similarly, if a person due to family tension, loss of near and dear ones or for some other like reason tries to take his/her own life then he/she is not guilty under this Section. In such a scenario, the person needs support and condolences and not punishment. The person attempts to commit suicide under adverse circumstances. Some of them can be schizophrenic attitude, poverty, unemployment, intolerable physical illness etc.

### **CONSTITUTIONAL VALIDITY OF SECTION 309 OF IPC**

The major constitutional test that the Section 309 of IPC has to pass is the test of Article 21. Article 21 of the Indian Constitution provides

<sup>43</sup> Mental Healthcare Act, No. 10, Acts of Parliament 2017, (India).

<sup>44</sup> SECTION 309, Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

<sup>45</sup> *Emperor v Dhirajia* (1940) All 647.



that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 provides for right to life and personal liberty. Right to life does not mean mere animal existence but to lead a complete, meaningful and dignified life. The major question that needs to be answered with regard to the constitutional validity of Section 309 of IPC is that whether 'Right to Life' under Article 21 of Constitution also included 'Right to Die'. The Courts from time-to-time have given contrary decisions with regard to this:

- **Maruti Sripati Dubal v. State of Maharashtra**<sup>46-</sup>

The Respondent Maruti Dubal in this case tried to kill himself by pouring kerosene on his body and by lighting matchstick because of physical injury caused by an accident and mental illness. After he failed in attempting suicide he challenges Section 309 of IPC. The Bombay High Court in this case held that Section 309 of IPC is violative of Article 21 of the Indian Constitution. The Court stated that 'right to live' also includes the existence of 'right to not live' or 'right to die' and this should be considered as a fundamental right. The indiscriminate interdiction on the right to die on pain penalty as found unreasonable. As per J.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 attempts. Those who make the suicide attempt on account of mental disorders require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement... Thus, in no case does the punishment serve the purpose and in sometimes is bound to prove self-defeating and counter-productive."*

- **State v. Sanjaya Kumar**<sup>47-</sup>

<sup>46</sup> Maruti Sripati Dubal v State of Maharashtra, 1987 CrLJ 743.

The decision of the Bombay High Court was further affirmed by the Delhi High Court in the case of 'State v. Sanjaya Kumar'. The Court in this case acquitted a young boy who attempts to commit suicide by consuming poison. The Delhi High Court also favoured for the repeal of Section 309 of IPC.

- **Chenna Jagdishwar v. State of A.P.**<sup>48-</sup>

The Andhra Pradesh High Court in the case of 'Chenna Jagdishwar v. State of A.P.' upheld the constitutional validity of Section 309 of IPC. It observed that Section 309 is not violative of Article 19 and 21. Right to life does not include Right to die and therefore, attempt to suicide is an offence. The Court further stated that Courts have sufficient power to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention.

- **P. Rathinam v. Union of India**<sup>49-</sup>

The Supreme Court of India in the landmark case of 'P. Rathinam v. Union of India' disputed the validity of Section 309 of IPC. The Court said that Section 309 violated Article 21 of the Indian Constitution and is cruel and irrational in nature. Such penal provision should be repealed in order to humanize the penal laws.

- **Gian Singh v. State of Punjab**<sup>50-</sup>

The dilemma that Court faced with regard to the validity of Section 309 of IPC is that whether to give importance to human life or to provide greater autonomy to individuals. The Apex Court in the case of 'Gian Singh v. State of Punjab' overruled its own previous judgement of 'P. Rathinam v. Union of India'. The Court in this case upheld the validity of Section 309 and observed that it is not violative of Article 21 of the Constitution as Right to life does not include Right to die. The Court also stated that Section 309 is not violative of Article 14 of the

<sup>47</sup> State v Sanjaya Kumar, 1986 (10) DRJ 31.

<sup>48</sup> Chennajagadeeswar v State of Andhra Pradesh, 1988 CrLJ 549.

<sup>49</sup> P.Rathinam v Union of India, 1994 3 SCC 394.

<sup>50</sup> Gian Kaur vs State of Punjab, 1996 2 SCC 648.



Constitution because of the integral flexibility in the section. Section 309 is not harsh and arbitrary in nature as it is always upon the Courts to give punishment depending upon the seriousness of the offence committed. In this case, the Court after looking into the serious disease of the respondent held that he needs to be treated with sympathy and therefore imposed only a fine as a punishment for committing attempt to suicide.

### **ATTEMPTS MADE TO CHANGE SECTION 309 OF IPC**

There have been many attempts made in the past to change the Section 309 of IPC. Some Law Commission Reports in the past have recommended the repeal of Section 309 of IPC while others have suggested for retaining the said section. Finally, with the passing of Mental Healthcare Act, 2017, the scope of Section 309 got limited to a great extent.

### **LAW COMMISSION REPORTS:**

In 1971, the Law Commission of India in its 42<sup>nd</sup> Report<sup>51</sup> had suggested the repeal of Section 309 by describing it as 'harsh and unjustifiable'. Following the said suggestion, Rajya Sabha had passed the Indian Penal Code (Amendment) Bill, 1978 but unfortunately it did not come into force as the bill got lapsed due to the dissolution of Lok Sabha. However, in 1997, the Law Commission in its 156<sup>th</sup> report after the decision in the case of 'Gian Singh v. State of Punjab' suggested for the retention of Section 309.

In the year 2008, the Law Commission in its 210<sup>th</sup> report title '*Humanization and Decriminalization of Attempt to Suicide*',<sup>52</sup> recommended for the repeal of Section 309. It called Section 309, "*a stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide.*"

<sup>51</sup> 42<sup>nd</sup> Law Commission Report: Indian Penal Code, 1971.

<sup>52</sup> 210<sup>th</sup> Law Commission Report: Humanization and Decriminalization of Attempt to Suicide, 2008.

### **MENTAL HEALTH CARE ACT, 2017<sup>53</sup>:**

There were many speculations with regard to Section 309 while the Mental Healthcare Act was on board. Many people after the enactment of Mental Healthcare Act, 2017 believe that Section 309 got repealed but in reality the Act did not repeal the said section but it narrowed down its application. Section 115(1) of the Act provides that:

*"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."*

The section eliminates the aspect of culpability attached to Section 309. Unless otherwise proved, the Act presumes the person who tries to commit suicide as under severe stress. The burden of proof is on the prosecution that alleged crime has taken place. Moreover, Section 115(2) of the said Act directs the Government to provide rehabilitation, care and therapy to a person having acute anxiety in order to reduce the possibilities of further recurrences.

The Supreme Court in the landmark case of '*Common Cause*'<sup>54</sup> legalized passive euthanasia. The Court also suggested that a law is needed which will protect the terminally ill patients, when they decline medical treatment including hydration and artificial nutrition, so that they can be saved from the vices of Section 309 for committing attempt to suicide.

### **COULD HUNGER STRIKES AND THE PRACTICE OF SANTHARA BE TERMED AS ATTEMPT TO SUICIDE?**

#### **HUNGER STRIKES:**

The announcement of hunger strikes are pretty much common in India. The hunger strikes are

<sup>53</sup> Mental Healthcare Act, No. 10, Acts of Parliament 2017, (India).

<sup>54</sup> *Common Cause (A Regd. Society) v Union of India*, AIR 2018 SC 1665.



announced in order to pressurise the authorities for meeting the demands. There is difficulty in ascertaining that whether the hunger strike can be termed as attempt to suicide. Intention to kill one's own self is the pre-requisite for Section 309. In the case of hunger strikes, the intention of the person is not to kill oneself but to pressurise the authorities for some cause. A intention to kill one's own self is missing, so, hunger strikes cannot be deemed as attempt to commit suicide.

One of the leading cases on this issue is '*Ram Sunder Dubey v. State*'.<sup>55</sup> In this case, the accused was employed in the Mental Hospital, Bareilly. He got suspended from their. He alleged the authorities of the hospital for discrimination and on 27/02/1960 started the hunger strike for reinstating him again. On 01/03/1960, his condition began to deteriorate, so, the Station Officer shifted him to District Hospital and from there to District Jail. The accused said that he only gone for a hunger strike and not for fast unto death. As an evidence, the accused showed that he was taking lemon juice in morning as well as evening. The lower court convicted the accused and observed that accused actually gone for fast unto death until his demands are fulfilled.

The Allahabad High Court set aside the conviction of lower court and stated that there is lack of evidence for convicting the person for attempt to suicide. As per the High Court, if someone declares for going on a fast unto death and then proceeds by not taking any nourishment and the stage is reached where he can collapse any time then there is imminent danger for health and he can be held guilty under Section 309.

• **SANTHARA OR SALEKHANA:**

Santhara is an age-old religious tradition followed and practiced in Jainism. It is the voluntary spiritual decision to abandon the

body for purification and for achieving salvation. There is confusion with regard to ascertaining Santhara as an attempt to suicide. The law in this case is not settled. Those who are in favour of Santhara justify it on the basis of Article 25, 26 and 29 of the Constitution which protects the protects the religious practices and beliefs.

The Rajasthan High Court in the case of *Nikhil Soni v. Union of India*<sup>56</sup> held Santhara as an illegal practice and it attracts Section 306 and 309 of IPC. The Court further observed that it is not an essential religious practice and violative of Article 21 as Right to Life does not include Right to Die. However, the Supreme Court stayed the judgement of the Rajasthan High Court. The matter is still pending in the Supreme Court.

**ARGUMENTS ADVANCED IN FAVOUR AND AGAINST OF DECRIMINALISATION OF ATTEMPT TO SUICIDE**

**ARGUMENTS ADVANCED IN FAVOUR OF DECRIMINALIATION OF ATTEMPT TO SUICIDE:**

1. Decriminalizing suicide attempts will serve to eliminate stigma and avoid punishment in the aftermath of an attempt, as well as enable for more accurate suicide-related statistics to be collected.
2. Psychiatric disease is a prominent cause of nonfatal suicide attempts, according to study. Nonfatal suicide attempts in adults and children are linked to depression and other mental illnesses. Stressful life events such as the death of a loved one, the loss of a job or relationship, financial insolvency, impending criminal prosecution, and suffering from, or recently being diagnosed with, a terminal illness are the other major risk factors.
3. Suicide attempts, in essence, require assistance rather than punishment due

<sup>55</sup> *Ram Sunder Dubey v. State*, AIR 1962 All 262.

<sup>56</sup> *Nikhil Soni v. Union of India* 2015 Cri LJ 4951.



to the significant risk of mental or psychological disorder. The philosophical boundaries surrounding an individual's right to life and death have been debated in various fields and perspectives, with mixed results.

4. According to the World Health Organization, suicide is presently legal in 59 countries throughout the world. Suicide attempts are no longer illegal in Europe, North America, much of South America, and a few parts of Asia. In countries controlled by English common law, suicide attempt decriminalisation came late. Similarly, legal and coroner participation in suicide certification is far higher in these countries than in continental Europe and the Scandinavian region, where clinicians are permitted to certify suicidal deaths without legal intervention.
5. Most importantly, because the majority of attempted suicides are reported to authorities as unintended, those who have attempted suicide lack access to critical emotional and mental health services. If the crime is decriminalised, patients and their family will be in a better position to seek mental health care publicly following an attempt. From a societal standpoint, decriminalisation is a more sympathetic and humanistic approach to the problem than prosecution. It will also help with better reporting and the compilation of more accurate suicidality epidemiological data. As a result of the criminalization of suicidal acts, suicide becomes a hidden problem, making it more difficult for suicidal persons to seek the treatment they need. Improved and more precise data can lead to better planning and execution of efforts in the direction of suicide prevention.

#### **ARGUMENTS ADVANCED IN AGAINST OF DECRIMINALISATION OF ATTEMPT TO SUICIDE:**

1. The first fundamental argument is based on the theological notion that only God has the ability to decide when a person's life should end, and hence attempting to end one's own life should be considered a malevolent act. Suicide has long been condemned by religious communities all across the world. Suicide deaths are not recognised with customary burial practises in several ethnic groups. Suicide is not regarded as a means of achieving salvation in Hinduism (moksha). Suicide death is often associated with familial humiliation, social disgrace, and other negative effects.
2. The belief that the law can serve as a deterrent to future endeavours is another key proponent of criminalization. However, it is uncertain whether or not having a law that allows suicide attempters to be prosecuted acts as a deterrent. While there is little awareness of Section 309 in India, a significant number of persons are aware of its existence and are not discouraged from trying suicide. Prior to attempting suicide, 46.2 percent of males and 26.6 percent of females were aware of the legislation, according to a survey of 200 attempted suicides at a General Hospital Emergency Department.
3. There have been reported cases when people showed up in government offices and threaten to kill themselves if their demands are not met. If Section 309 is repealed then there will be no recourse available to control such persons who try to pressurise the government.

#### **SUGGESTIONS AND CONCLUSION**

In light of the above discussion, the author is of the opinion that Section 309 of IPC should be decriminalized. Attempted suicide is a sign of anguish, indicating that the person needs help



in his personal and psychological life rather than a fine and/or prison sentence. Criminal deterrents are more appropriate for criminal activities than for acts of distress. Moreover, research shows that Section 309 does not deter people from making suicidal attempts. There is no justification for treating people with suicidal tendencies as if they are criminals. Suicide attempts are often seen as a cry for help, but they should not be classified as criminal action. As a result, section 309 of the IPC should be removed. In past various attempts have been made to decriminalize attempt to suicide, the most successful among them is the enactment of Mental Healthcare Act, 2017. However, inspite of the fact that the said Act narrowed down the scope of Section 309 but non-repealment of the section gives the scope to the authorities to misuse the said provision. One of the arguments in against of de-criminalisation of attempt to suicide that the Section 309 is needed to control those persons who try to threaten or blackmail authorities in order to meet their demands. However, the percentage of such persons is quite less. The majority of persons who make attempt to suicide are suffering from some kind of stress. Therefore, some new strategy needs to be developed to control such persons rather than by applying the said section on all persons who commit attempt to suicide.

Those who have suicidal thoughts should be encouraged to seek professional help without fear of being arrested. Some of the recommendations to control the cases of attempted suicides and to avoid future recurrences:

- All patients hospitalised after an attempted suicide must get a psychiatric consultation.
- Access to the most widely used fatal methods of suicide (insecticides, prescription drugs) should be restricted, while elements that favour suicide, such as alcohol, should better be controlled.
- The media could be swayed to portray suicide and the method employed in a

sympathetic light, discouraging future attempts. The media and non-governmental organisations (NGOs) should also be used to spread the word that 90 percent of persons who commit suicide have a mental illness, and that timely intervention by specialists can dramatically reduce this figure.

- Last but not least, all of South Asia's countries urgently require the formation of a national suicide prevention strategy. A well-designed, comprehensive programme focused on prevention, detection, and proper treatment of Mental and Addictive Disorders, particularly in primary care, has the best chance of saving lives in the long run.

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