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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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HOPE NOT HANDCUFFS: WHY INDIA FINALLY LET GO OF CRIMINALIZING ATTEMPTED SUICIDE THROUGH BNS

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Introduction

The term suicide has been originated from the Latin phrase “Sui Cadere” which means to kill oneself. Hence the general meaning of suicide implies the act of a person through which he intends to kill himself. Emile Durkheim asserts that the term "suicide" can be used to describe any death that results directly or indirectly from an action taken by the individual that he knows will cause this outcome. People belonging to all race, caste, gender, creed, nationality etc. are prone to commit suicide. From the ancient times to the present, this act has been considered as disgraceful by many societies. From time to time, societies have been adopting various measures to combat suicide.[1]

Under the former criminal law of India namely Indian Penal Code (IPC) suicide per se was not a crime but attempt to suicide was a crime under section 309. As the time passed many countries like Afghanistan, Bangladesh, Brunie and including England decriminalized the attempt to suicide. This was done because with time, the people realized that the person attempting suicide is in need of support, care and compassion rather than punishment and as a result, the public opinion also changed regarding the criminalization of this act.

For the same reasons, when the new criminal law of India was adopted in 2023, that is the Bharatiya Nyaya Sanhita (BNS), the former section criminalizing the attempt to suicide was repealed and hence India finally let go of criminalizing suicide through BNS. But still India has to go a long way in ensuring the mental wellbeing of its citizens and decrease the number of suicide attempts and its commission thereof.

[1] Aarushi Mishra & Sidhant Verma, *THE LEGAL AND HISTORICAL JOURNEY OF SUICIDE DECRIMINALIZATION IN INDIA*.

Section 309 of IPC

The IPC's Section 309 addressed suicide attempts. "Anyone who attempts suicide and commits any act that leads to the commission of such an offense shall be punished with simple imprisonment for a term, which may extend to one year [or with a fine, or with both],". [2]

This section criminalized the attempt to commit suicide and states that any person who intentionally tries to take his own life through any means was liable for the offence of attempt to suicide. The means which could be used by an individual included consuming poison, shooting oneself, willfully drowning etc. Thus, it can be concluded that the attempt to suicide includes an intentional self-destruction of life by an individual.

The in-depth reasons for which this provision was incorporated under IPC were –

1. English Law inheritance – India inherited this provision from England as it was England's colony. During that time, attempt to suicide was considered as a grave crime in England, not only against the state but also against the religion and God.
2. Religious and moral reasons – Committing suicide was considered not only against the moral standards of the societies but also considered as a grave sin in various religions like Hinduism, Buddhism and even Christianity. It was believed that committing suicide was the violation of sanctity of life and it was not within the right of individuals to end their lives.
3. Duty of the state – In the colonial times, it was believed that state was the guardian of its citizens and hence was bound by the duty to protect the lives of individuals even against the self-attempts which also included the attempt to commit suicide.
4. Policy of deterrence – During the colonial times, the Britishers saw criminalization of suicide as a means of creating deterrence among the masses. They thought that with this provision the number of people committing suicide would decrease substantially. The colonial rulers also feared that unchecked suicide would lead to destabilizing families, decrease productivity and could also be used as a means by people to protest.

Retention Vs. Abolition

The debate between the retention and abolition of section 309 of IPC consists of various views by individuals and institutions which are –

[2] *India Code: Section Details*, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&sectionId=46074&sectionno=309&orderno=347 (last visited Sept. 27, 2025).

Arguments in favour of retention of section 309 of IPC are –

1. According to Rattanlal and Dhirajlal in Law of Crime, The right to life is recognized by all civilized legal systems. Our Constitution is in writing. The Founding Fathers of the Constitution saw a number of fundamental rights as essential. Therefore, the obligation to live is likewise regarded as a part of the right to life provided by Article 21. Therefore, a person normally has no right to take his own life. He must fulfill his obligations to society as a whole and to himself. Therefore, life is more than just existing; it is a radiant vitality, a sense of completeness with the potential for ongoing intellectual and spiritual development.
2. individual life is considered to be sacred and no individual should be allowed to destroy his life however bad the circumstances. Moreover, through retention of this provision, the state can effectively enforce the duty to protect its citizens.
3. Another argument can be its effectiveness to deter individuals from attempting to commit suicide. It is seen that due to criminal liability, many individuals restrained from committing suicide and even the threats of punishment make an individual reconsider any impulsive act which he intends to do.
4. The retention of this section can prevent misuse of suicide attempt in sensitive cases. There is always a possibility that in crucial cases related to debt, family disputes, or property conflicts, individuals may attempt suicide to emotionally threaten others. Thus, criminalizing suicide attempt will significantly reduce this possibility of misuse of suicide attempts as a coercive tool.
5. Criminalization of suicide symbolizes the collective responsibility of society to discourage the act as it is seen that suicide is not just a private act of an individual but rather it brings many social consequences like family trauma, financial burden, social stigma etc.

On the contrary, there are many arguments in favour of the abolition of section 309 of IPC. Which are –

1. The court noted in MARUTI SHRIPATI DUBAL V. STATE OF MAHARASHTRA 1987 that section 309 of IPC violates article 21 of the Indian Constitution and is therefore beyond the jurisdictions of the law. Additionally, it was confirmed that the right to die is a part of the right to life.

According to Justice P.B. Sawant, it is hard to comprehend how penalizing people who have attempted suicide may accomplish the same goal if the recommended sentence is meant to dissuade future suicides. People who attempt suicide due to mental illnesses should receive psychiatric care rather than being imprisoned in cells where their condition is likely to deteriorate and cause more mental instability. Therefore, punishment never accomplishes its goal and occasionally proves to be counterproductive and self-defeating.

The court upheld the constitutionality of section 309 of the IPC in Chenna Jagdeshwara v. State of Andhra Pradesh, ruling that the right to life does not entail the right to die.

2. In the matter of Sanjay Kumar Bhattia v. State The continuation of Section 309 IPC is an anachronism unworthy of a human society such as ours, according to Sachar J. A law such as Section 309 IPC that lacks a rationale has no right to stay in effect.
3. The law commission of India have also given certain reports regarding the abolition and retention of section 309 of IPC which includes –
    a. Its 42nd report published in 1971 suggested repeal of section 309 of IPC.
    b. Its 156th report published in 1997 recommended retention of section 309 of the IPC.
    c. Finally, its 210th report published in 2008 suggested the repeal of section 309 of IPC and justified it to be unreasonably harsh and unjustifiable. It even called section 309 to be a "stumbling block in prevention of suicides and improving the access of medical care to those who have attempted suicide".
4. The Mental health care act (MHCA), 2017 explicitly states, "Notwithstanding anything contained in Section 309 of IPC, any person who attempts to commit suicide shall be presumed, unless proven otherwise, to be under severe stress and shall not be tried and punished under the said Code." This implies that the person attempting suicide will not be liable under section 309 of IPC as they will be presumed to be under severe distress. This section had a direct impact on decriminalization of attempted suicide. [3]
5. World health organization regards attempt to suicide not as a crime but a public health issue. With the same view, it gave a policy brief on decriminalization of suicide attempts from the aspect of mental health. This policy was supported by various factors such as changing public opinion, human rights obligations etc. According to WHO,

[3] V. Sneha et al., *Decriminalization of Suicide as per Section 115 of Mental Health Care Act 2017*, 60 INDIAN J PSYCHIATRY 147 (2018).

individual attempt suicide not because of criminal intent but because of mental distress, social pressure etc.

Decriminalization Of Attempt to Suicide Through BNS

It was seen in 2014, at Rajya Sabha that 22 states and union territories were in favour of abolishing section 309 of IPC, whereas 5 states were of the view that this section should remain in our criminal code. In 2023 BNS was introduced and section 309 was repealed.

BNS decriminalizes the attempted suicide in India which is a welcome step for destigmatizing suicide and suicide attempts in India. A survey conducted of 171 countries revealed that decriminalization of attempted suicide led to decrease in suicide attempts for instance Sri Lanka and Singapore.[4] As per the situation in India, the national suicide rates which stood at 12.4 per lack has been reduced to 9.87 per lack by 2024. This shows the positive effect of decriminalization of suicide attempt through BNS.[5]

The potential benefits of decriminalizing attempted suicide are –

1. There would be more accurate reporting of cases.
2. The people attempting suicide will not be prone to the fear of legal proceeding or consequences.
3. The people attempting suicide will get medical as well as other assistance.
4. More and more steps can be taken by the government in order to decrease the attempt to suicide rates rather focusing on punishing the attempters.
5. Eventually the suicide rates in India will decrease.

Potential Challenges

Even after the decriminalization our struggle does not end, still there are many challenges which we need to face off with and some of them are –

1. It is necessary to train and educate police officials about the decriminalization of attempted suicide and their duty to refer such person to appropriate health care center.
2. Literacy and awareness have to be raised among the masses about the same.
3. Proper mechanisms have to be created for monitoring and assessment of the attempted

[4] *BNS Decriminalise Attempted Suicide in India*, CMHLP, https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/ (last visited Sept. 27, 2025).
[5] Samridhi Tewari, *CISF Sees 40% Decline in Deaths among Its Personnel*, THE HINDU, Jan. 2, 2025, https://www.thehindu.com/news/national/cisf-sees-40-decline-in-deaths-among-its-personnel/article69054268.ece.

suicide cases, their reporting, recording, and their referral to proper mental health care expert for further assistance etc.

4. It is necessary to ensure that as attempted suicide is decriminalized, there is no misuse of this abolition for coercing people. And proper provision should be made to deal with such incidences.
5. As after the decriminalization, medical health care systems will have to bear heavy work load so it is necessary to ensure that there are a good number of hospitals, mental health care providers etc. to deal with the increase burden not only in urban areas but also in rural areas.
6. Another challenge is that even after decriminalization the social stigma remains. Even after decriminalization the survivors may hide their suicide attempt because of shame or social stigma.
7. Another challenge can arise in distinguishing the genuine suicide attempts from those which are done to coerce or manipulate the other people. This may deprive ones who genuinely need help and give unnecessary help to those who do not need the same.
8. It is also necessary to keep the cost for services provided after reporting or referral to the mental health care experts less or minimum.

Conclusion

Section 309 was introduced in IPC, which made attempt to suicide as a crime punishable with simple imprisonment which may extend to one year or fine or both. As the time passed the people realized that criminalization of attempted suicide was inappropriate and it should be decriminalized. However, there were still some who supported its retention. The people who favored its decriminalization argued that it was very cruel to impose punishment on a person who was already battling with mental health, it was violating human rights, justice etc. and there were also several cases where judges advocated for its abolition. The people who supported the retention of section 309 argued that this is important for creating deterrence, its abolition could lead to misuse. Finally with the facilitation of mental health care act 2017, judicial decisions and law commission recommendations section 309 was abolished through the new criminal code namely BNS in 2023. The struggle did not end here, there were further challenges like creating awareness and literacy among the masses, providing training to the primary health care providers and the police, ensuring availability of mental health care and hospitals in every area including rural areas, preventing misuse etc.