

# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

### **ABSTRACT**

Depression and the tendency to suicide remains an anathema in our country like India impacted by various religions and orthodox beliefs. The actual suicide rate represents an imprecise image vis-à-vis the number of persons who attempt to die by suicide every year. Section 309 of IPC which criminalised the act of attempt to suicide, despite being termed as ‘monstrous’ and ‘ultra vires’ by the apex court, remained constitutional until Indian government passed Mental Healthcare Act, 2017 in 2018 to provide ideal healthcare facilities to persons with mental illness (PMI) subsequently decriminalising the act of attempt to suicide. The newly passed legislation raises specific questions and viewpoints that deserve analysis. This article adopts doctrinal research methodology and seeks to, *first*, jurisprudentially analyse the historical backdrop of suicide and viewpoint of diverse religions regarding its criminalisation. *Second*, Literature review of the befuddled judicial approach towards the constitutionality of Sec.309 of IPC, which expands for more than two decades. *Third*, the snags involved in the implementation of the Mental Healthcare Act, 2017 and its efficacy to revolutionise the Indian Mental Healthcare industry. Through discussion of these three questions, the author seeks to concatenate suicide rationally; its history with the present legislation and identify its fallibility as a law.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

### I. Introduction

Suicide is as an act where a person premeditatedly causes own death. Suicide is triggered by several factors, including financial issues, relationship problems, family problems, abuse, medical problems and varied reasons. Suicide levels are typically high in middle and low-income countries, where people generally go through financial difficulties that lead to depression and end up taking their own lives.<sup>1</sup> Each suicide is a tribulation that impacts families, neighborhoods and has long-lasting consequences on the people left behind. Suicide not only transpires in developed countries but is a global phenomenon in all regions of the world.

Attempted suicide is self-injury with the desire to end one's life that does not result in death.<sup>2</sup> In India, the number of people who ended their lives by committing suicide was 131,008 in 2016; 129,887 in 2017; and 134,516 in 2018.<sup>3</sup> “A total of 134,516 suicides were reported in the country during 2018, showing a surge of 3.6% in comparison to 2017, the suicide rate increased by 0.3% in 2018 in contrast with 2017. The overall male: female ratio of suicide victims for the year 2018 was 68.5:31.5, which remains uniform compared to the year 2017. The proportion of female victims were more in ‘Marriage Related Issues’ specifically in ‘Dowry Related Issues’, and ‘Impotence/Infertility’. The age group of 18-30 years and persons ranging 30-45 years of age were the most vulnerable groups resorting to suicides. These age groups accounted for 34.9% and 31.6%

---

<sup>1</sup> *Suicide*, WORLD HEALTH ORGANIZATION (May 26, 2020, 11:06 PM), <https://www.World Health Organization.int/news-room/fact-sheets/detail/suicide>.

<sup>2</sup> Etienne K., *World Report on Violence and Health*, 1 WHO, 185 (2002).

<sup>3</sup> NATIONAL CRIME RECORDS BUREAU (May 26, 2020, 11:51 PM), <https://ncrb.gov.in/sites/default/files/chapter-2-suicides-2018.pdf> (hereinafter NCRB).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

suicides, respectively.”<sup>4</sup>

Furthermore, suicide constitutes one of the leading causes of death among 15–29-year-olds globally in the year 2016.<sup>5</sup> There were an estimated 793,000 suicide deaths worldwide in 2016, indicating an annual global age-standardised suicide rate of 10.5 per 100,000 population.<sup>6</sup> NCRB collects data on suicide from police recorded suicide cases. The unreported cases to the police are not covered by the NCRB, which gives us a misleading and fallacious picture of the obnoxious condition; therefore, empirical analysis of these statistics manifest an incomplete impression of suicide rate in India as most of the rural suicides go unreported to the Police departments for the perturbation of getting punished.

Thus, suicidal behaviour is a primary concern of public health and mental health calling for urgent action. One reason the Indians view suicide with disapproval is the portrayal of the act as an offence in the Indian Penal Code<sup>7</sup> itself. Survivors of attempted suicide make an impression of tainted members of society.<sup>8</sup> Besides, because of the strictness of the Penal Code and the cultural shame of follow-up police visits, it results in gross underreporting, refusal to help the affected person, and fear of notifying the proper authorities.<sup>9</sup> Individuals and their families, in turn, hide up the facts involved in the attempt, and as a consequence, the affected person does not receive

---

<sup>4</sup> NCRB, Id.

<sup>5</sup> Rajiv Radhakrishnan & Chittaranjan Andrade, *Suicide: An Indian perspective*, 54(4) INDIAN J PSYCHIATRY 304, 304-319 (2012).

<sup>6</sup> WORLD HEALTH ORGANIZATION (May 27, 2020, 12:15 AM), [https://www.World Health Organization.int/gho/mental\\_health/suicide\\_rates/en/](https://www.World Health Organization.int/gho/mental_health/suicide_rates/en/).

<sup>7</sup> The Indian Penal Code (45 of 1860) (hereinafter IPC).

<sup>8</sup> Mojica S. & Murrell D., *The Right to Choose: When Should Death be in the Individual's Hands?*, 12 WHITTIER LAW REVIEW 471, 471-504 (1991).

<sup>9</sup> Joseph, A., ET AL., *Evaluation of Suicide Rates in Rural India using Verbal Autopsies*, 326 BMC 1121, 1121-1122 (2003).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

appropriate medical or psychological help. The social structure of the culture impacts the primary motives of Suicide in India, which often involve friction with parents, in-laws and spouses.<sup>10</sup> Disturbing statistics, High suicide rate, and under-reporting of cases demanded justification of attempt to suicide as an offence. Therefore, in India, The Mental Healthcare Act, 2017<sup>11</sup> was passed on April 7, 2017, and enforced on May 29, 2018, to eradicate suicide as a taboo from the Indian society aimed at decriminalising attempt to suicide and prohibiting the trial of an affected person under Sec.309 of the IPC.<sup>12</sup>

Section 115 of the Mental Healthcare Act, 2017 reads-:

- (1) Notwithstanding anything contained in Sec.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.

MHA is “an act to provide mental healthcare and aid to persons with mental illness and to protect, promote and fulfil the rights of such mentally ill persons (who have a substantial disorder and grossly impaired functioning), during delivery of mental healthcare services and for matters

---

<sup>10</sup> Lester, ET AL., *Suicide in India*, 5 Archives of Suicide Research 91, 91-96 (1999).

<sup>11</sup> The Mental Healthcare Act, 2017 (No 10 of 2017) (India) (hereinafter MHA).

<sup>12</sup> Section 309 of IPC-:

Attempt to commit 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].

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

connected in addition to that or incidental to it.”<sup>13</sup> The aim is to deter the individual from re-trying the act.

The article seeks to, *first*; analyse the evolution of jurisprudence behind the rationale of suicide. *Second*, why Sec.309 of IPC is monstrous?, the conflict regarding its enforceability and the befuddled approach of the Supreme Court upon its constitutionality. *Third*, practical implications of the Mental Healthcare Act, 2017 and the provision of decriminalisation of attempt to suicide.

## II. Historical Perspective And Jurisprudential Evolution Of Suicide

Understanding suicide in the Indian sense involves an understanding of the subcontinent’s historical, political, and cultural history, while culture has seldom pervaded the lives of people for as long as it has been in India. Across multiple times, suicide has been glorified, bemoaned, and even denounced. “Be it the tragic Greek heroes Aegeus, Lycurgus, Plato, Socrates; or the Roman characters Brutus, Cassius or the Egyptian princess Cleopatra; or Samson, Saul, and Achitophel of the Old Testament; or the suicide bombers of today’s world, the universality of suicide transcends theology and tradition.”<sup>14</sup>

Various sects had various speculations on suicide since the Sati system in India was eliminated by the British Raj, in which the bride had to commit suicide by devoting herself either expressly or voluntarily to the funeral fire of her husband. Ancient Indian scriptures contain remarkable tales of valour in which suicide is glorified as a way of escaping guilt and humiliation.

---

<sup>13</sup> Vadlamani LN & Gowda M, *Practical implications of Mental Healthcare Act 2017: Suicide and suicide attempt*, 61 INDIAN J PSYCHIATRY 750, 750-755 (2019).

<sup>14</sup> Evans G., ET AL., *NY: Facts on File, THE ENCYCLOPEDIA OF SUICIDE*, NEW YORK, (1988).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

### a) Hindu Jurisprudence

“Suicide has been mentioned in the ancient tales of Ramayana and Mahabharata. When Lord Sri Ram died, there was an epidemic of suicide in his kingdom, Ayodhya.”<sup>15</sup> “The sage Dadhichi sacrificed his life so that the Gods may use his bones in the war against the demons. The Bhagavad Gita opposes suicide for selfish purposes and insists that such death cannot have ‘shraddha’, the essential last rites.”<sup>16</sup> Murder under Hinduism is a sinful act, whether of another or one’s own body. Upanishads make an exception and mention the commission of suicide solely for religious purposes such as fasting, this custom, known as prayopavesha, was linked to the attainment of ‘moksha’ (liberation from the cycle of life and death) and is still practised to this day which requires self-immolation, respect for Deity.<sup>17</sup> It allows the individual, time to reconcile worldly affairs, contemplate life and to draw close to God.

Contrarily, Isha Upanishad condemns the act of suicide and states that: “All who kill the self go after death to demonic worlds that are cloaked in blind darkness”.<sup>18</sup> Nevertheless, several writers have used the term ‘destroy the self’ to refer to the immortal soul, the atman, which, of course, is sacred and cannot be destroyed. So, ‘kill the self’ is meant to be a denial of the reality of the atman. The verse thus becomes more of a condemnation of atheism than of suicide.<sup>19</sup>

Suicide committed out of passion (due to desperation, rage, frustration) is condemned in the

---

<sup>15</sup> INDIAN J PSYCHIATRY, *supra* note 13.

<sup>16</sup> Thomas K, ET AL., *Suicide Epidemics: The Impact of Newly Emerging Methods on Overall Suicide Rates - A Time Trends Study*, 11 BMC PUBLIC HEALTH, 314 (2011).

<sup>17</sup> Braun W. Sallekhana, *The Ethicality and Legality of Religious Suicide by Starvation in the Jain Religious Community*, 27(4) MED LAW 913, 913-924 (2008).

<sup>18</sup> SWAMI NIRVIKARANANDA, ISHA UPANISHAD Verse 3.

<sup>19</sup> *The Role of Faith Communities in Preventing Suicide: A Report of an Interfaith Suicide Prevention Dialogue*, SUICIDE PREVENTION RESOURCE CENTER (2009), [http://www.sprc.org/library/faith\\_dialogue.pdf](http://www.sprc.org/library/faith_dialogue.pdf).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

passages of Manu Laws such as, “No ritual of libation should be poured out for those who...have taken their own lives.”<sup>20</sup> Alternatively, same text sanctions suicide by saints who have achieved Moksha and accomplished all worldly affairs: “When he has gradually abandoned all attachments in his way and is free from all duality, he is absorbed directly into the ultimate reality.”<sup>21</sup> Concluding, different Hindu texts maintain different opinion upon the consideration of suicide as a sin, albeit, the majority of the texts categorise religious deaths as a sacrament; a way to procure nirvana.

### b) Historic Christian faith

Early Christians believe suicide is an act of immorality and blasphemy. Some Christian churches in modern times oppose this notion, though others still espouse this view and preach it. Perhaps the most critical development in the cultural history of suicide was the advent of mainstream Christianity, for Christian ideology has generally maintained that suicide is morally immoral, in the lack of explicit instructions from the Bible on Suicide. While the fathers of the early church rejected Suicide, St. Augustine is commonly credited with providing the first reason for the Christian ban on suicide.<sup>22</sup> Throughout the middle ages, law and common custom permitted desecration of the mortal body, along with confiscation of property of the victim and the refusal of Christian burial. Augustine saw suicide as an absolute sin. St. Thomas Aquinas later defended this prohibition on three grounds:-<sup>23</sup>

---

<sup>20</sup> SUMATHI BHARGAVA, MANUSMRITI, chapter 5, verse 89.

<sup>21</sup> Id, Chapter 6, Verse 81.

<sup>22</sup> AMUNDSEN D., SUICIDE AND EARLY CHRISTIAN VALUES, (B. Brody ed. Suicide and Euthanasia: Historical and Contemporary Themes), (1989).

<sup>23</sup> Michael Cholbi, *Suicide*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Jun. 05, 2020, 12:40 AM),

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

- Suicide is against natural self-love, the purpose of which is to protect us.
- Suicide affects the group of an individual as a whole.
- Suicide violates our duty towards God because, in taking our lives, we are violating his power to determine how long our earthly life lasts.

Aquinas' theory codifies that in the medieval doctrine, suicide nullified human beings' relationship to God, for our control over our body was limited to *usus* (possession, employment) where God retained *dominium* (dominion, authority).<sup>24</sup> Thomas More and Michel de Montaigne were two interesting exceptions to the sixteenth century.<sup>25</sup> In More's opinion, for those with traumatic and chronic conditions, plenty appears to recommend voluntary suicide; although the satirical and fantastic tone of his work makes it doubtful how many supported this proposition. Montaigne presents numerous anecdotes about people taking their own lives in his *Essais* and intersperses these anecdotes with quotes from Roman authors encouraging suicide. While the general scepticism of More prevented Montaigne from taking a firm moral stance on suicide, he only nods the orthodox Christian stance and conceptualises the issue as a matter of personal judgment or conscience, and not in traditional theological terms.<sup>26</sup>

### c) Islamic Jurisprudence

Islam views suicide strictly detrimental to human values and a chastised sin towards God. "In the Quran, although God is said to be 'the Most Merciful, the Most Kind' and forgives all sins,

---

<https://plato.stanford.edu/archives/fall2017/entries/suicide/>.

<sup>24</sup> 1273 AQUINAS & ST. THOMAS, *SUMMA THEOLOGICA*, IN *BASIC WRITINGS OF SAINT THOMAS AQUINAS*, (Anton Pegis ed. New York: Random House), (1945).

<sup>25</sup> Cholbi, *supra* note 23.

<sup>26</sup> MINOIS G., *HISTORY OF SUICIDE: VOLUNTARY DEATH IN WESTERN CULTURE*, (Baltimore: Johns Hopkins University Press), (1999).



# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

the great sin of unbelief is deemed unforgivable.”<sup>27</sup> Nevertheless, the unpopular view that actions committed in jihad, leading to one’s death, even if death is assured by its nature (e.g. suicide bombing), are not considered suicide. Instead, such acts are viewed as a form of martyrdom.<sup>28</sup> Contrarily, the Quran states that those involved in the assassination of the innocent are wrongdoers and transgressors.<sup>29</sup>

Hadith, also known as a record of traditions or saying of Prophet Muhammad, second only to the authority of the Quran, the holy book of Islam leaves no doubt as to the extent of consideration of suicide as an unlawful act. Therefore, Islam, as a religion, condemns suicide as a grave sin.<sup>30</sup>

A jurisprudential analysis of history and perusal of different religious perspectives gives us a clear view of the condemnation of suicide throughout history. The barriers to the suicide of race, religion, caste and sex do not exist as they are all mentioned in the Ancient Scriptures.

According to the *Historical School of Jurisprudence*, “Law is legacy of past, a product of every individual community or nation”. Friedrich Carl Von **Savigny**<sup>31</sup>, the father of Historical school of thought, believed that law is found and not made and is associated with people; Law is not static, albeit, dynamic and varies from place to place and from time to time depending upon the social, economic, geographical and historical circumstances. **Puchta**, the disciple of Savigny

---

<sup>27</sup> *Religious Views on Suicide*, MUSLIM PUBLIC AFFAIRS COUNCIL (Jun. 05, 2020, 12:55 AM), <https://www.mpac.org/programs/anti-terrorism-campaign/islamic-views-regarding-terrorism-and-suicidem/religious-views-on-suicide.php>.

<sup>28</sup> MPAC, Id.

<sup>29</sup> 254 YEMANT, GOD, RELIGION, SCIENCE, NATURE, CULTURE, AND MORALITY (Archway Publishing, New York), (2014).

<sup>30</sup> Franz Rosenthal, *On Suicide in Islam*, 66 JSTOR. 239, 239-259 (1946).

<sup>31</sup> (hereinafter Savigny).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

preached “Law grows with the growth and strengthens with the strength of people, and finally dies away as the nation loses its nationality”.<sup>32</sup> *Volksgeist*, the concept of law propounded by Savigny derives its origin from Greek terms (Volks means People and Geist means their Common Will), which in the literal sense means ‘Common Will of the People’.<sup>33</sup>

Savigny argued that the law has a national temperament which develops like a language, and it not only binds people with belief and opinion in a group but also evolves with the advancement of society. The two elements (law and people) evolve hand in hand. History is evidence that legislation is established in compliance with pre-existing social forms and accepted by a national character such as language. Law is a continuous and unbreakable process, not a product of the day, bound by a common culture and social beliefs. It evolves through a periodic and continuous process of society.<sup>34</sup>

The rigidity of law in the state not only acts as an impediment in its growth as a society but also imposes a toiling effect on people as its subjects. Similarly, Attempt to Suicide as an offence in the country hampers the evolvement of the society and parts away with its progressive growth. The jurisprudential study of Historical school of thought gives us ample rationale to do away with Sec.309 of IPC.

India’s Common Law legal system bears colonial influence. In England, the Suicide Act 1961<sup>35</sup> abrogated the law laying down that attempt to commit suicide is an offence. Although suicide is no longer an offence in itself, “any person who aids, abets, counsels or procures the

---

<sup>32</sup> DR. REGA SURYA RAO, LECTURES ON JURISPRUDENCE AND LEGAL THEORY 24 (2018).

<sup>33</sup> Walton F. P., *The Historical School of Jurisprudence and Transplantations of Law*, 9 JSTOR. 183, 183–192 (1927).

<sup>34</sup> JSTOR, Id.

<sup>35</sup> The Suicide Act, 1961(9 & 10 Eliz 2 c 60) (England).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

suicide of another or an attempt by another to commit suicide, is guilty of an offence and liable on conviction on indictment to imprisonment for a term which may extend to 14 years”.<sup>36</sup> *Pari Passu*, India maintains the same approach as that of England when a person aids, abets, counsels or procures the suicide of another or an attempt by another to commit suicide,<sup>37</sup> albeit, the position is *Non-Sequitur* when it comes to the former. However, there are stricter laws when a person abets the suicide of a child or insane person.<sup>38</sup> It took almost 60 years for India when compared to England to decriminalise the act of attempt to suicide. Therefore, ineffectuality of Sec.309 was not only the need for humanisation but also it equates the Indian Criminal Law to Global Wavelength.

### III. Constitutionality of Section 309 IPC: The Debate

Twenty-three years ago, the Supreme Court Judge B.L. Hansaria described the plight of a rape survivor victim forced to face the trial of an attempt to suicide. In his view in *P. Rathinam v. Union of India*,<sup>39</sup> the judge, described the trial in one word: “persecution.”

Justice Hansaria asked in a heartfelt appeal: “How can the already tormented woman be subjected to persecution? Have we become soulless? Let us humanise our laws. It is never late to

---

<sup>36</sup> Id.

<sup>37</sup> Section 306 of the IPC:-

Abetment of suicide —If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>38</sup> Section 305 of the IPC:-

Abetment of suicide of child or insane person-If any person under eighteen years of age, any insane person, any delirious person, any idiot, 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.

<sup>39</sup> 1994 SCC (3) 394 (hereinafter *Rathinam* case).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

do so.”<sup>40</sup>

It took more than two decades for the Parliament to adopt the most recent Mental Healthcare Act.

Ab Initio, it was in 1985 where the Division Bench of Delhi High Court in *State v. Sanjay Kumar Bhatia*,<sup>41</sup> the constitutionality and continuance of Sec.309 of IPC has been debated. Sachar, J., as he then was, observed for the Bench: “It is ironic that Sec.309 IPC continues to be on our Penal Code. Instead of sending the young boy (accused) to the psychiatric clinic, it gleefully sends him to mingle with criminals. The continuance of Sec.309 IPC is an anachronism unworthy of human society like ours. Need is for humane, civilised and socially oriented outlook and penology. No wonder so long as society refuses to face this reality, its coercive machinery will invoke the provision like Sec.309 IPC which has no justification to continue to remain on the statute book.”<sup>42</sup>

Soon, Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*,<sup>43</sup> The Bench, speaking through Sawant, J. on the grounds of the section’s unconstitutionality, took the view that the case against the appellant under Section 309 of the Criminal Code was ultra vires and therefore violated Articles 14 and 21.<sup>44</sup> The High Court of Bombay also found Sec.309 to violate Art.14, which includes the ‘right to equality’ mainly on two grounds:-<sup>45</sup>

---

<sup>40</sup> *Rathinam*, Id.

<sup>41</sup> AIR 1988 CrLJ 5499 (hereinafter *Bhatia* case).

<sup>42</sup> *Bhatia*, , *supra* note 41.

<sup>43</sup> 1987 (1) BomCR 499 (hereinafter *Maruti* case).

<sup>44</sup> INDIA CONST. art. 14, art. 21.

<sup>45</sup> *Maruti*, *supra* note 43.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

- First, which act or act in a series of acts will constitute an attempt to commit suicide, where it is not known that some attempts may be severe, while others may not be serious. In the absence of plausible definitions or even guidelines, Sec.309 was made arbitrary by learned judges.
- Secondly, Sec.309 deals with all attempts to commit suicide by the same measure without referring to the circumstances in which the attempts are made.

The Court also held that the ‘right to live’ as recognised in Art.21 of the Constitution which guarantees right to life and personal liberty would also include the ‘right not to live’ or to be forced to live. To put it positively, Art.21 would include the ‘right to die’ or to put an end to one’s life.<sup>46</sup>

The Supreme Court’s Division Bench in *Rathinam* case held that Section 309 of the IPC violates Art.21, as the ‘right to live’ in which the said Article speaks can be said to include the ‘right not to live’ a coerced life. The Supreme Court, however, disagreed with Bombay High Court’s view in the *Maruti* case, and held that Sec.309 of the IPC was not in breach of Art.14 and assessed the Court’s reasoning-:<sup>47</sup>

- The first of the corresponding explanations are not valid because no matter what discrepancies there might be as to what constitutes suicide; it would inevitably be taking of one’s life deliberately. There is still a difference between suicide researchers as to what constitutes suicidal behaviour; and the different methods (firearms, drug poisoning), that are used to commit suicide. Subsequently, the prosecution is always open to the accused to

---

<sup>46</sup>*Maruti*, Id.

<sup>47</sup>*Rathinam*, *supra* note 39.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

plead that his act did not constitute suicide, which is why the Court would also decide on this particular point.

- As far as the treatment of multiple attempts to commit suicide by the same method is concerned, the same cannot also be treated as an infringement of Art.14 since the type, severity and degree of the attempt can be taken care of by tailoring the sentence appropriately. It is noteworthy that only a limited term of one year has been given for in Sec.309 of IPC which justifies implication of fine. It is this aspect which weighed the application of Probation of Offenders Act<sup>48</sup> whose Section 12<sup>49</sup> enables the Court to ensure that the victim is not subjected to any shame or disbarment.

Supreme Court subsequently overruled Non-Sequitur, the decision of *Rathinam* case in *Gian Kaur v State of Punjab*<sup>50</sup> whereby court said:-

Art.21 guarantees protection for human existence and personal freedom and, by no way, ‘extinction of life’ can be read as being ‘protected by life’ or be included in ‘protection of life’. Any ideology cannot provide sufficient rationale to construe Art.21 to include the ‘right to die’ as part of the guaranteed constitutional right therein. Further, Art.21 states that the right to live is Jus Naturale, but suicide is an undeniable end or extinction of life and, hence, is incompatible with the ‘right to life’ concept. Each aspect of life that dignifies the person can be read but not that which extinguishes him. If anything, the ‘right to die’ is intrinsically incompatible with the ‘right to

---

<sup>48</sup> Probation of Offenders Act (Act No. 20 of 1958) (India).

<sup>49</sup> Section 12 of POA:-

Removal of disqualification attaching to conviction—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.

<sup>50</sup> 1996 SCC (2) 648 (hereinafter *Gian Kaur* case).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

live’.<sup>51</sup>

Supreme Court’s decision in *Gian Kaur* case; therefore, unequivocally affirms that Art.21 does not include the ‘right to die’. Accordingly, Sec.309 IPC was held to be constitutional.

Law Commission of India in its report<sup>52</sup> termed Sec.309 of IPC as inhuman, anachronistic irrespective of its constitutionality, which needs to be repealed from the statute book. The attempt to suicide is the expression of a troubled mind which requires medication and care rather than punishment. It would not be equitable and just for any person who has endured pain and ignominy in not committing suicide to inflict further judicial punishment. They further iterated that Sec.309 of IPC is not only the major cause for expanding suicide rates in the country, but it also imposes double jeopardy on an already distressed person and acts as an obstruction in the rendering of adequate healthcare counselling.

### a. Suicide and Euthanasia

Euthanasia can be termed as an intentional act to end one’s life through medical means. Therefore, it becomes necessary to reflect upon the relationship between suicide and euthanasia from the legal perspective.

It is pertinent to mention that only passive euthanasia is legal in the country and active euthanasia remains to be illegal, although, no law expressly forbids its application. The difference between them is-:

---

<sup>51</sup> *Gian Kaur*, Id.

<sup>52</sup> *Humanization and Decriminalization of Attempt to Suicide*, LAW COMMISSION OF INDIA, (Jun. 02, 2020, 1:01 PM), <http://lawcommissionofindia.nic.in/reports/report210.pdf>.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

- Passive Euthanasia- The physician will either give the patient a withholding or death diagnosis, treatment discontinues where medical support is designed to keep a terminally ill patient artificially alive.<sup>53</sup>
- Active euthanasia occurs when the medical professional, or another person, deliberately do something that causes the patient to die.<sup>54</sup>

Supreme Court in *Aruna Ramchandra Shanbaug v Union of India*<sup>55</sup> allowed passive euthanasia in exceptional circumstances and permitted withdrawal of life-sustaining treatment from patients incapable of making a decision.

Apex court in its landmark judgment of *Common Cause v Union of India*<sup>56</sup>, when referred to *Gian Kaur* case, in an inconsistent statement, held that ‘right to live with dignity’ also includes ‘right to die with dignity’ as well. The Constitution bench held that the right to life, according to Art.21, includes smoothing in terminally ill person’s death process and who has no chance of survival in a continuous vegetative state. The Court further emphasised that “every adult is the master of his body and one who does not want to take an artificial life support system is permitted to exercise his right to die with dignity”. The Court has held that no physician may consider an active medication which releases the individual from pain and suffering, thereby prohibiting active euthanasia in the country.

#### **IV. Practical Implications of the Mental Healthcare Act, 2017**

---

<sup>53</sup>*Ethics - Euthanasia: Forms of euthanasia*, BBC, (Jun. 08, 2020, 2:04 PM), <http://www.bbc.co.uk/ethics/euthanasia/overview/forms.shtml#:~:text=Active%20euthanasia%20is%20when%20death,someone%20lets%20the%20person%20die.>

<sup>54</sup> BBC, Id.

<sup>55</sup>WP (Cr) no. 115 of 2009 (hereinafter *Aruna Shanbaug* case).

<sup>56</sup>(2018) 5 SCC) (hereinafter *Common Cause* case).



## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

Section 115 of MHA, 2017 supplants Sec.309 of IPC, thereby, decriminalising the act of attempt to suicide. The new act defines ‘mental illness’ as a “substantial disorder of thought, perception, guidance or memory that severely impairs the judgment or capacity for the satisfaction of ordinary life demands as well as mental conditions associated with drug abuse.”<sup>57</sup> This act allows all to have access to mental health facilities. This right is to guarantee transparency, sustainability and consistency of services. It also mandates the provision of mental health services in all districts of the country to be established and available. However, the financial burden of state governments will be huge if the central government does not allocate a significant portion of the budget to support the expenditure, as the district and sub-district level of governments already lack adequate medical infrastructure; therefore, it becomes vital to have critical insight into the implementation of the newly passed act.

### a. Right of Persons with Mental Illness(PMI)

Every person has a right under this act to get adequate, affordable, quality mental healthcare across the country. The act prohibits denial of access to mental healthcare to anyone on any of the grounds of discrimination. This provision entitles poor and people Below Poverty Line (BPL) to get free healthcare facilities and has every right to complain in case of lack of facilities.

### b. Mental Health Establishments

The act mandates the setting up of the Central Mental Health Authority at the national level

---

<sup>57</sup>Express Web Desk, *What is Mental Healthcare Bill?*, THE INDIAN EXPRESS (Jun. 03, 2020, 7:42 PM), <https://indianexpress.com/article/what-is/mental-healthcare-bill-passed-parliament-lok-sabha-4588288/>.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

and the State Mental Health Authority at the state level. These bodies will-.<sup>58</sup>

- Register, supervise, and maintain a register of all mental health institutions;<sup>59</sup>
- develop standards for quality and service provision norms for such establishments;
- maintain a register of mental health professionals;
- educate law enforcement officers and mental health practitioners on the provisions of the act; submit program failure reports and;
- advise the government on matters relating to mental health.

### c. Advance Directives(AD)

The provision enables the patient to select the manner and aspects of his treatment subject to the agreement of the practitioner. However, patients with mental condition incapable of making such a sound decision rely upon the expert opinion of the physician.

### d. Decriminalising Suicide and Forbidding Electroconvulsive Therapy(ET)

The new act decriminalises attempt to suicide by rendering Sec.309 of IPC ineffective. The act also prohibits the application of Electroconvulsive Therapy without sedatives and anaesthesia. The act bans the practice of Electroconvulsive Therapy on minors expressly.

The act also provides for protection against protection from cruel and inhumane treatment

---

<sup>58</sup>Abhishek Mishra & Abhiruchi Galhotra, *Mental Healthcare Act: Need to Wait and Watch*, 8(2) INDIAN J PSYCHIATRY 67, 67-70 (2018).

<sup>59</sup> K. Deepalakshmi, All You Need to Know about The Mental Healthcare Bill, THE HINDU (Jun. 17, 2020, 5:22 PM), <https://www.thehindu.com/news/national/all-you-need-to-know-about-the-mental-healthcare-bill/article17662163.ece>.

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – Bhakti Arora, Amity Law School, Delhi (GGSIPU).

**Co-Author** – Eleen Garg, Amity Law School, Delhi (GGSIPU).

---

along with the right to community living. The hospital is duty-bound to maintain the confidentiality of the patient's medical records. The act also imposes a duty upon the police officer to report to the magistrate in case of ill-treatment of mentally ill person.

The act imposes punishment tenure of 6 months or Rs 10,000 as fine or both in case of violation of its provisions. Repeated offenders are subjected to 5-year imprisonment or fine ranging Rs. 50000- 5 Lakhs or both.

## V. Drawbacks of Mental Healthcare Act, 2017

Previous legislation, the Mental Health Act, 1987, focused on the referral and care of people with severe psychiatric illness to mental institutions but was later repealed due to extreme lack of resources.<sup>60</sup> The MHA 2017 shadowed, by similar reason, has the following drawbacks:-

- Hypothetically assumes the availability of adequate healthcare facilities at state and district levels;
- presupposes that patient know the law whereas the ground condition in the country is contrary;
- suspends use of ET even in emergency cases on minors;
- mandates registration of institutions that tends to undertake treatment of PMI with the central authority, which may act as an obstruction in rendering mental

---

<sup>60</sup> Math SB, ET AL., *Mental Health Act (1987): Need for a Paradigm Shift from Custodial to Community Care*, 133 INDIAN J MED RES 246, 246-9 (2011).

## Attempt to Suicide

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

[Volume 4, Issue 1]

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

healthcare as many institutions would deny treatment on the ground of absence of registration;

- the act tends to be odiously patient-centric and completely ignores family contributions and acknowledgements where in India families are indeed an integral part of one's life;
- the act does not make exceptions in case of its contravention, which would act as an impediment in freedom of medical practitioners to operate in emergency cases;
- the act does not lay down any provisions for suicide prevention.

The act does not lay out a framework regarding the contributions to be made by central and state authorities to an already distressed healthcare industry, which in the extremity would result in ineffectiveness. The estimated health spending in India is 1.2 per cent of gross domestic product for the financial year 2017–2018. Across India, 65 per cent of health spending comes out of pocket, and such expenditure drives about 57 million people into poverty every year.<sup>61</sup> When compared globally, it is one of the lowest figures for a developing nation like India, and since 2013–2014, public health spending has gradually plummeted. In India, “for every 10,189 people there is one government doctor (the World Health Organization (WHO) suggests a ratio of 1:1,000), indicating a deficiency of 600,000 physicians, and the nurse: patient ratio is 1:483, reflecting a shortage of two million nurses.”<sup>62</sup> The data manifests the appalling condition of the Indian Healthcare Industry and, how the act is primarily based on a hypothesis. The paucity of

---

<sup>61</sup> *Centre, State Governments Spent 1.3% of GDP on Healthcare in 2015-16*, THE TIMES OF INDIA (Jun. 17, 2020, 4:44 PM), <http://www.timesofindia.indiatimes.com/india/Centre-state-governments-spent-1-3-of-GDP-on-healthcare-in-2015-16/articleshow/53509406.cms>.

<sup>62</sup> *India Facing Shortage of 600,000 Doctors, 2 Million Nurses: Study*, THE ECONOMIC TIMES (Jun. 17, 2020, 4:55 PM), <https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/india-facing-shortage-of-600000-doctors-2-million-nurses-study/articleshow/68875822.cms>.

## **Attempt to Suicide**

*A jurisprudential review of its decriminalization vis a vis Mental Healthcare act*

**[Volume 4, Issue 1]**

---

**Author** – *Bhakti Arora, Amity Law School, Delhi (GGSIPU).*

**Co-Author** – *Eleen Garg, Amity Law School, Delhi (GGSIPU).*

---

resources is the major constraint, especially in rural areas. The sole enactment of the law would not serve its ultimate purpose until substructure is not constructed regarding its strict implementation in a society like India, where people often tend to break the law.

## **VI. Conclusion**

Mental health is often not given requisite recognition in our country. Depression is ubiquitous and exempts none, may it be a successful businessman, a successful actor, a struggling student and farmer for whom sustainability comes as a new challenge every day. High suicide rates in the country give us an intelligible impression of the aggravating problem. Doctrinal study of suicide, from the historical outlook, presents us with a comprehensible perception of how suicide was censured in ancient times by diverse religions. Critical insight into the jurisprudential theory of Savigny makes us realise the importance of the dynamic nature of law and how its stagnancy can act as an impediment in the growth of society. Lawmakers particularly need to be distinctly diligent while dealing with an acutely fragile topic like suicide. It was in the *Common Cause* case where ‘right to die’ was included in ‘right to life’ under Art.21. Judicial approach upon the constitutionality of Sec.309 of IPC remained ambiguous until the enactment of MHA 2017, which decriminalized the act of attempt to suicide. However, there is a dire need for the development of skills among professionals, strategic policy regarding allocation of funds, the spread of awareness among people about the importance of mental healthcare in order to implement the legislation effectively. The legislation tends to be more of an aspiration rather than pragmatic given the hitherto ailing state of the Indian healthcare industry. The act needs significant amendments for its effective implementation catering to the needs of society even at the provincial level; otherwise, the aim of the act seems to be more of a distant dream.