

Decriminalisation Of Attempt To Suicide: Humanity Wins Over Atrocity

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Abstract

Suicide has since times immemorial, been a subject of controversy and unending level headed discussion. Our nation is quickly climbing up the ladder of reporting increasing number of suicide cases annually. Many psychologists stated that developing sentiments of isolation and the meaninglessness of life are contributing to more suicides now-a-days however it would be a monstrous Act to inflict further suffering on a man, who has already found his life so insufferable, by inflicting punishment on such person. Unsuccessful endeavor of suicide is 'cry for help' that one should understand. This article reviews on contemporary scenario & position of attempt to suicide in India & in any other country as well, it also challenges the legal status of section 309 of I.P.C (attempt to suicide). Section 309 of the Indian Penal Code inflicts double punishment on a person who has already got tired of his own life and wants to end it. Further, it talks about that, the Section 309 , I.P.C. is ultra vires the Constitution being violative of Articles 14 and 21 and thereof should be struck down.

The article also reviews the Indian and International Legal aspect of attempt to suicide. Mental Health Care Bill,2013, which was under consideration in the Rajya Sabha (upper house); is now passed by the parliament in 2017 as it decriminalizes suicide attempt by the people who are mentally ill and provides services to those people who are suffering from mental illness. The Bill mandates that a person attempting suicide shall be presumed to be suffering from "severe trauma" and, therefore, shall not be tried or punished by law. It also ensures that persons with such suicidal or depressed tendencies be given help and rehabilitated. It is further expressed that crimes are committed by criminals and suicide is not a crime as such person needs assistance and counseling. For the same, the repeal of the archaic law contained in section 309 of the Indian Penal Code would save many lives. Deletion of section 309 is not only an invitation to attempt to commit suicide but also a great step taken by the union government.

INTRODUCTION

“DO NOT PUNISH THE HELPLESS, HELP THE HELPLESS”

- Justice Shri Jahagirdar

For a person who wants to commit suicide, the fear of unknown death, is less than the fear of living in pain for the rest of their lives. It is an ultimate pain-reliever for them. Before getting into the goodness or badness of the section 309 of IPC, let us have a profound understanding into what urges one to commit suicide, it is not only one thing that compels someone to feel suicidal. It's a combination of lot of things including: pain, loneliness, rejection, deep sadness, depression, helplessness and many more. Life is a phase of one entrance, but with many exits in the world. The word “suicide” is taken from the modern Latin word Suicide “act of suicide”, but it is derived from the Latin phrase “sui cadere” which means to kill oneself [sui - of oneself & cadere - kill]³. Suicide means deliberate termination of one's own physical existence or self-murder, where a man of age of discretion and compos mentis i.e. voluntarily kills himself. It is an act of voluntarily or intentionally taking one's own life⁴. Similarly, suicide refers to "every act of self-destruction is, in common language described by the word 'suicide' provided that, it is an intentional act of a party knowing the probable consequence of what he is about."⁵

To elaborate, a person committing suicide must commit it himself, irrespective of the means employed by him in achieving his object of killing himself.⁶ Suicide can likewise be clarified as where a man of age of discretion and compos mentis voluntarily kills himself.⁷

³ <http://en.wikipedia.org/wiki/Suicide>. (accessed on 9th July 2015)

⁴ *Stedman's Medical Dictionary* (28th ed.). Philadelphia: Lippincott Williams & Wilkins. 2006. ISBN 978-0-7817-3390-8

⁵ Halsbury's Laws of England, 4th Edition, Volume 9, Page 686

⁶ *Gangula Mohan Reddy v. State of Andhra Pradesh, A.I.R. 2010 S.C. 327, 328 (India)*

⁷ *Ratanlal & Dhirajlal, The Indian Penal Code 1787 (V.R. Manohar ed. 32nd ed. 2011)*

“The term suicide is applied to all instances of death resulting directly or indirectly from a positive or negative act of the victim himself which he knows will produce this outcome”.

Hence, it can be reasoned that suicide is a result of various psychological, social, biological, cultural and environmental factors involved.⁸

SUICIDE IN ANCIENT TIMES:

Suicide was permissible in certain circumstances in ancient India. This is evident from the statement of Manu:

“A Brahman having got rid of his body by one of those modes (i.e., drowning, precipitating, burning or starvation) practiced by the great sages, is exalted in the realm of Brahmana, free from sorrow and fear.”⁹

Govardhana and Kulluka, while writing commentaries on Manu said:

A man may undertake the mahaprasathana, (great departure) on a journey which ends in death, when he is incurably diseased, or meets with a great misfortune, and that, it is not opposed to vedic rules which forbid suicide.¹⁰

In England, the Suicide Act 1961 abrogated attempt to suicide as an offence. Although suicide is no longer an offence in itself, any person who either abets the commission of suicide, or abets an attempt to commit suicide of another, is guilty of an offence and liable on conviction to imprisonment for a term which may extend to 14 years.¹¹

⁸SuicidePrevention,WHO

http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/

⁹ Manu’s Code Chapter on the Hermit in the Forest, sec. 32 quoted in K.D. Gaur, A Textbook on The Indian Penal Code, (Universal Law Publication (3rd ed.) 2007)

¹⁰ Laws of Manu, translated by George Buhler, Sacred Books of the East by F. Max Muller(1967 reprint) Vol. 25, p.206 quoted in K.D. Gaur, A Textbook on The Indian Penal Code, (Universal Law Publication (3rd ed.) 2007)

¹¹ Halsbury’s Laws of England, 4th ed. 2000 Reissue, Vol. 11(1), Para 106 quoted in Law commission of India, 210th report on Humanization and Decriminalization of Attempt to Suicide, October 2008, pg 10

Jainism have approved of the practice of ending one's life by one's own act in certain circumstances (*Sallekhana or Santhara*), while condemning it in other circumstances. Under

*Nikhil Soni V. Union of India & Ors.*¹², It was submitted that Shvetambara group of Jain religion believes that the Santhara is a way to achieve moksha. A person adopting the Santhara is helped by the entire community in designing it ceremoniously. People visit the person for his/her darshan and to witness the occasion with reverence. The house of such person becomes a place of pilgrimage. The entire act is considered to be an act of courage and rational thinking on the pretext that soul never dies. The petitioner has given several examples of the Santhara to show that it is not an age old and forgotten practice and that it is being practiced even now regularly. Some of the instances of Santhara have been given in paragraph 4 of the writ petition as follows:-

"(i) Sohan Kumariji administered the vow of SANTHARA, on 7th Oct., 1993. Her fast lasted for 20 days.

(ii) Premji Hirji Gala in Nov. 1994. Fasted uptill 212 days.

(iii) Jethalal Zaveri fast lasted for 42 days in 1997.

(vi) Sadhvi Nerbhay Vani. Fasted for 20 days, 24th May 2003 at Jain Temple Gohana Town and Muni Matiryaji Maharaj, Fasted for 35 days belonging to Terapanth Dharam Sangh at Udasar near Bikaner, Rajasthan."

Presently, current case is pending in Supreme Court and Supreme Court stayed the order of High Court.

The attitude of Buddhism has been ambiguous, though it has encouraged altruistic suicide under certain circumstances.¹³

ALARMING INCREASE IN SUICIDE CASES:

Suicide as such is no crime under Indian Penal Code. It was only attempt to commit suicide that was punishable under the Indian Penal Code,¹⁴ which is currently decriminalized. Suicide

¹²MANU/RH/1345/2015

¹³ Nikhil Soni v. Union of India

¹⁴K.D.Gaur 5thEdition, Universal Law Publications

attempt, on the other hand, is non-fatal self-directed potentially injurious behavior with any intent to die as result of behavior.

Due to impact of globalization, materialism & consumerism leading to becoming increasing depressed & distressed; with at least lesser support.¹⁵

In a recent study, it has been revealed that as many as 1.2 lakh people end their lives every year, in India by committing suicide. Other than that more than four lakh people attempt to commit suicide. A majority of them have been found to be suffering from some sort of mental disorder or depression or melancholy, addiction and alcoholism. The alarming rise in suicides clearly indicates that frustration leading to extreme step to killing oneself.¹⁶

According to figures released by the National Crime Records Bureau (NCRB) recently, the number of suicide cases had risen from 89128 suicides in 1995 to 113914 suicides in 2005, an increase of 27.7 per cent. In just 10 years, between 1995 and 2005 as stated in the Table given in crime Record Bureau.¹⁷ Family problems and illness were the two major reasons for suicides, together accounting for 46% of all suicides. Drug abuse/addiction (3.3%), love affairs (3.2%), bankruptcy or sudden change in economic status (2.0%), poverty (1.9%), and dowry dispute (1.6%) were the other causes of suicides. Though India ranks 43rd in the WHO ranking of suicides per 100,000 people, the rate (10.3%) is increasing and remains above the world rate. One study projected 187,000 suicides in India in 2010, while official data by the Government of India claims 134,600 suicides in 2010.¹⁸

Further, according to the figures released by the National Crime Records Bureau (NCRB), The number of suicide has been decreased from 1, 34,600 to 1, 31,666 in 2014.

In a large majority, the suicidal behavior is typically a symptom of psychiatric illness or is an act of psychological distress, indicating that the person requires assistance in his personal and

¹⁵Ibid

¹⁶*Supra*, Pg.1

¹⁷The registrar general of India (2005) (one lakh=0.1 million=10000). Accidental Deaths and suicides in India, (2005), NCRB (MHA),p.131,Table 14. See K.D Gaur, Commentary on Indian Penal Code(2006),pp. 977-981 for incidence of suicides

¹⁸The Registrar General of India, Government of India (2012)

psychological life, not punishment by fine and/or imprisonment. Penal sanctions will only serve to exacerbate suicidal persons' risk for depression, anxiety, and repetitive suicidal behavior.¹⁹

CONTEMPORARY SCENARIO AND POSITION IN OTHER COUNTRIES:

Legal aspects against suicide originated from the declaration by St. Augustine of suicide being a sin (354-430 CE). Historically, the influences of religious institutions were instrumental in shaping the legal aspects, favoring the criminalization of suicidal attempts. After the French Revolution, along with other socio-cultural changes in Europe, the attitude towards suicide and attempted suicide gradually started to change.²⁰ During 19th and 20th century, most of the developed countries have revoked criminalization of attempted suicide, however few nations including India, continue to treat attempt to suicide as a criminal offense.

Countries with criminalization of attempt to suicide:

Countries that have retained attempted suicide as a criminal offense are mainly from two regions viz. North African region and South Asian region.

In the African region, Kenya, Malawi, Nigeria, Rwanda, Tanzania, Ghana and Uganda are among the countries that currently criminalize attempt to suicide. For example, In Rwanda, a person who engages in attempt to suicide, is liable, on conviction, to a 2-5 year prison sentence. In Uganda, attempt to suicide is a felony punishable by up to 2 years imprisonment. In Ghana Criminal Code (Act 29, 1960), attempt to suicide is considered as a crime.²¹

¹⁹AdinkrahM. Criminal prosecution of suicide attempt survivors in Ghana.Int J Offender Ther Comp Criminol.2013;57:1477-97

²⁰Sareen H, TrivediJK.Legal implication of suicide problems specific to South Asia. Delhi Psychiatry J 2009;12:121-5.; Trivedi JK. Punishing attempted suicide an anachronism of 20th century. Indian J Psychiatry 1997;39:87-9.

²¹Wendo C. Suicide cases on the rise-Survey. The New Vision Aug 31, 2007; SchlebuschL,Burrows S. Suicide attempts in Africa. In: Wasserman D, Wasserman C, editors. Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective. Oxford: Oxford University Press; 2009.p.105-8; AdinkrahM. Criminal prosecution of suicide attempt survivors in Ghana.Int J Offender Ther Comp Criminal 2013; 57: 1477-97.

In the South Asian region, Pakistan, Malaysia, Singapore, Bangladesh are among the countries that continue to criminalize the suicidal attempt. In Singapore, a person who attempts suicide can be imprisoned for up to one year. Additionally, North Korea also criminalizes suicide with a peculiar deterrent, where the family and relatives of the suicide victim might be penalized as a form of collective punishment for the act of suicide.²²

Countries with decriminalization of attempt to suicide:

Countries that have decriminalized attempted suicide have continued to criminalize the abetment to suicide, suicide pacts and at times, deliberate self-harm.

In the Australian state of Victoria, the survivor of a suicide pact can be charged with manslaughter and abetting other person's suicide. In New Zealand, the abetment of the suicides of others is a crime and similarly in Russia, inciting someone to suicide is punishable by up to 5 years in prison. Even in Ireland, Section 2(1) of the Criminal Law Suicide Act of 1993 now reads, "Suicide shall cease to be a crime",²³ but self-harm is not seen as a form of attempted suicide. Suicide and attempted suicide are not crimes under the Roman-Dutch law. Some of the states of U.S. continue to have laws against suicide pacts, aiders and abettors, and for insurance purposes. Only a few countries from South Asia, which include Srilanka, Thailand, Maldives and Indonesia, do not treat attempted suicide as a crime.

Currently, World Health Organization identified 59 countries across the world that has decriminalized attempted suicide²⁴. As seen from above, the attempted suicide has been decriminalized in whole of Europe, North America, much of South America and few parts of Asia.

²²Jiang G, Cheng Q. Suicide attempts in Asia. In: Wasserman D, Wasserman C, editors. Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective. Oxford: Oxford University Press; 2009. p. 109-12.

²³ Criminal Law (Suicide) Act 1993 (Act No. 11/1993) (Ir.), available at <http://www.irishstatutebook.ie/1993/en/act/pub/0011/print.html>

²⁴ World Health Organization (WHO) Suicide prevention. 2012 [Last accessed on 2014Sep 18] http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/index.html

Decriminalization of suicidal attempt occurred relatively late in countries which were influenced by the English common law. Similarly, the legal and coroners' involvement in suicide certification tends to be much higher in these countries, compared to the continental Europe and Scandinavian region where doctors are allowed to certify suicidal deaths without recourse to legal authorities.²⁵

Decriminalization of attempt to suicide in other countries can be understood clearly from the table below²⁶:

COUNTRY	YEAR OF DECRIMINALIZATION	CERTIFICATION WITHOUT REFERENCE TO LEGAL AUTHORITY
Switzerland	-	Yes
Germany	1751	Yes
France	1791	Yes
Norway	1842	-
Finland	1910	-
Denmark	1868	No
Sweden	1864	-
England and Wales	1961	No
USA	-	No
Hong Kong	1967	No
Australia	-	No
New Zealand	1961	No
Canada	1972	No
Ireland	1993	No
Sri Lanka	1998	-

²⁵Neelman J. Suicide as a crime in the UK: Legal history, international comparisons and present implications. *ActaPsychiatrScand* 1996;94: 252-7; Rutz EM, Schmidtke A. Suicide attempts in Europe. In: Wasserman D, Wasserman C, editors. *Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective*. Oxford: Oxford University Press; 2009. p. 123-6.

²⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4261212/table/T1/>

CONSTITUTIONAL VALIDITY OF SECTION 309, IPC:

Acc. to the Ratan Lal and Dheeraj Lal's commentary on Indian Penal Code, "It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 Indian Penal Code."

The constitutional validity of section 309 of the Indian Penal Code, 1860 has been the subject matter of challenge several times before the Supreme Court and High Courts²⁷.

Article 21 of the Constitution says that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Every civilized legal system recognizes right to life. There are certain basic rights which have been treated as fundamental by the Founding Fathers of the Constitution. Article 21 is one of them. It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. Section 309 of the Indian Penal Code makes an attempt to commit suicide an offence punishable with imprisonment up to one year or with fine or with both. Thus, right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to end his life. He has to perform his duties towards himself and towards the society at large.²⁸

Right to live would, however, mean right to live with human dignity up to the end of natural life. *Maneka Gandhi's*²⁹ case the court gave a new dimension to Article 21. It held that right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

In *Maruti Shripati Dubal v. State of Maharashtra*³⁰, speaking through Sawant J., as he then was, examined the constitutional validity of section 309 and held that the

²⁷ <http://lawcommissionofindia.nic.in/reports/report210.pdf>

²⁸ Ratanlal & Dhirajlal's Law of Crimes 26th Edn., 2007, pages 1825-1827

²⁹ AIR 1978SC 597 (India).

³⁰ 1987 CriLJ 743

section is violative of Article 14 as well as Article 21 of the Constitution. The Section was held to be discriminatory in nature and also arbitrary and violated equality guaranteed by Article 14. Article 21 was interpreted to include the right to die or to take away one's life. Consequently it was held to be violative of Article 21.

The Supreme Court examined the constitutional validity of section 309 in *P. Rathinam v. Union of India*³¹, with reference to Articles 14 and 21. The Court considered the decisions of the Delhi, Bombay and Andhra Pradesh High Courts and disagreed with the view taken by Andhra Pradesh High Court on the question of violation of Article 21. Agreeing with views of the Bombay High Court, the Supreme Court observed: "On the basis of what has been held and noted above, we state that section 309 of the Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, 26 morality or public policy and an act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others, because of which State's interference with the personal liberty of the persons concerned is not called for. Explaining the reason for its decision the Court said that "Section 309 I.P.C., deserves to be effaced from the Statue Book to humanize our penal laws. It is a cruel and irrational provision and may result in punishing a person again (Doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide."

But, this decision was subsequently reversed and the Supreme Court,³² again upheld the provision penalising attempt to commit suicide and restored the constitutionality of Section 309.

In *State v. Sanjaya Kumar Bhatia*³³, the Division Bench of Delhi High Court while acquitting a young boy who attempted to commit suicide by consuming 'Tik Twenty' strongly advocated for deletion of section 309, I.P.C. from the statue book

³¹ AIR 1994 SC 1844 (India).

³² Gian Kaur v State of Punjab, A.I.R. 1996 S.C. 1257 (India)

³³1986 (10) DRJ 31 (India).

and held that *“the continuance of section 309 of the Indian Penal Code is an anachronism unworthy of human society like ours. Instead of sending the young boy to a psychiatric clinic society, gleefully (happily) sends him to mingle with criminals. Medical clinics are needed for such social misfits; but police and prison never.”*

However, in the recent landmark case of *Aruna Ramchandra Shanbaug v. Union of India*,³⁴ the apex court in 2011 opined that *“the time has come when Section 309 should be deleted by Parliament as it has become anachronistic.”* It further said that a person attempts suicide in depression, and hence he needs help, rather than punishment.

DECRIMINILIZATION OF ATTEMPT TO SUICIDE IS A BOON TO AN INDIAN SOCIETY:

Contentions in favor of decimalization of the offence of attempt to commit suicide:-

- Implementation of Section 309 IPC to deal with those who attempt to commit suicide is not only unsatisfactory but also discriminatory. A number of eminent social, religious and political leaders have acted contrary to the provisions of section 309 of IPC.³⁵ Infact, it would be a monstrous Act to inflict further suffering on a man who has already found his life so unbearable, and chances of happiness so slender that he decides to incur pain and death in order to end his life. If such a man fails in his endeavor, causing him further torture and degradation by inflicting punishment would be absurd and unjust.³⁶
- Deletion of Section 309 is not an invitation or encouragement to attempt to commit suicide but it act as a compassionate and sympathetic treatment for those who fail in their attempt to put an end to their lives. A person indulges

³⁴ A.I.R. 2011 S.C. 1290 (India)

³⁵ Supra, Pg.1

³⁶ Ibid

in the act of attempt to commit suicide for various reasons some of which, at times, are beyond his controls.³⁷

- Punishment does not serve the purpose: As has been humbly contended above that punishing the person who attempted suicide does not deter the person to do so. To elaborate, in no case does the punishment serve the purpose and in some cases it is bound to prove self-defeating and counter-productive.³⁸ Hence, it is argued that India should abolish this section because a mind determined to commit suicide can never be deterred by punishment.³⁹
- In *State v. Sanjay Kumar Bhatia*,⁴⁰ the Division Bench of the Delhi High Court observed: "The continuance of Section 309 IPC is an anachronism unworthy of a human society like ours.....the provision like Section 309 IPC which has no justification has no right to continue to remain on the statute book". While dealing with the discriminatory nature of Section 309 of the code, Justice P. B. Sawant has rightly observed⁴¹: The discriminatory nature of Section 309 becomes particularly prominent when its provisions are compared with Section 300, IPC. While defining murder, the legislature has taken pains to make a distinction between murder and culpable homicide not amounting to murder and has prescribed different punishments for both. However, Section 309 prescribes the same punishment to all individuals irrespective of the different sets of circumstances under which the suicide attempt is made. This is strange, although, murder is a more heinous offence with consequences to the other members of society.

It has been observed by an English writer:

"It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been

³⁷AIR 1994 SC 1884 (India).

³⁸ *Maruti Shripati Dubal v. State of Maharashtra*, 1987 (1) Bom.C.R. 499 (India)

³⁹ B.M. GANDHI, *supra* note 2 at 448

⁴⁰Shri Justice Jahangir, "Attempt a Suicide – A Crime or A Cry" 30-32, Ratan Lal & Dhirajlal, *Law of Crimes*, 1825-1827(2007)

⁴¹*Maruti Shripati Dubal v. State of Maharashtra*, 1987 (1) BomCR 499

willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation.⁴² Such persons deserve the active sympathy of society and not condemnation or punishment, the British Parliament enacted the Suicide Act in 1961, whereby attempt to commit suicide ceased to be an offence. By marking such people as 'criminals', treatment is rendered difficult. An act of attempted suicide is a matter for treatment and not punishment has been recognized by several countries.

Attempt to suicide is more a manifestation of a diseased condition of mind deserving of treatment and care rather than punishment. It would not be just and fair to inflict additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide. Section 309 of the Indian Penal Code provides double punishment on a man who has just got tired of his own life and wishes to end it.

A section of people thinks that the legal provisions related to suicide is irrational & brutal, as it provides double punishment to the person who is already suffering from mental illness at the time of committing suicide. On the other hand, India's suicidal law is based on the principle that the lives of men are not only valuable to them but also to the state which protects them. The state is under an obligation to prevent persons from taking their lives as it prevents them from taking the lives of others.⁴³

Section 309 is likewise a hindrance in prevention of suicides and enhancing the access of medical care to those who have attempted suicide. It is irrational to inflict punishment upon a person who on account of family discord, destitution, loss of a dear relation or other reasons like nature overcomes the instinct of self-preservation and decides to take his own life and if he is successful in his attempt, it is regarded as deliverance; if unsuccessful it is viewed as an offence. In such a case, the unfortunate person deserves sympathy, counseling not the prison.

In the recent landmark case, *Aruna Ramchandra Shanbaug v. Union of India*,⁴⁴ the apex court in 2011 opined that "the time has come, when Section 309 should be deleted by Parliament as it has become anachronistic." It further said that a person attempts suicide in depression, and hence he needs help, rather than punishment.

⁴² Gian kaur v. the State of Punjab 1996 AIR 946 1996 SCC (2) 648 JT 1996 (3) 339 1996 SCALE (2)881 (India).

⁴³Supra, Pg.1

⁴⁴ AIR 2011 SC 1290 (India)

Even the Bombay High Court had observed that, those who make the suicide attempt on account of the mental disorders, require psychiatric treatment and not confinement in the prison cells, where their condition is bound to worsen leading to further mental derangement.⁴⁵

The International Association for Suicide Prevention has also expressed the view that, attempted suicide should be decriminalized and that suicidal individuals need to be helped and imprisonment only makes their problems worse. The said Association, on September 10 every year sponsors 'World Suicide Prevention Day' as a part of its efforts to achieve effective suicide prevention. On this day the NGOs publicize suicide and suicide prevention and ask for immunity for the people who are serving sentences in Ghanaian prisons for attempting suicide.⁴⁶

The Indian judiciary and polity both have recognized the need to repeal the section and several attempts have been made starting from 1970, as summarized in table⁴⁷ below:

YEAR	EVENT
1970-71	42 nd report of the Law Commission of India recommended the deletion of the offence of the attempt to commit suicide from the penal code.
1978-79	Recommendation was accepted by the GOI but before it could be passed by the Lok Sabha in 1979, elected body of the country was dissolved and the bill lapsed.
1985	Decisions by Delhi High Court, Chief Justice Rajinder Sachar in State V. Sanjay Kumar Bhatia condemned the penal provision as “unworthy of human society”.
	Bombay High Court held it to be ultravires on the ground that it violates

⁴⁵Maruti Shripati Dubal v. State of Maharashtra, 1987 (1) Bom CR 499

⁴⁶ Deborah L. Kahn & David Lester, Efforts to decriminalize suicide in Ghana, India and Singapore, SUICIDOLOGY-ONLINE <http://www.suicidology-online.com/pdf/SOL-2013-4-96-104.pdf> (Last visited on Feb. 22, 2014)

⁴⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4261212/table/T2/>

1986	Article 14 and Article 21 of Indian Constitution.
1994	A 2 – judge bench of the Supreme Court in P. Rathinam V. Union of India struck down Section 309 of IPC (attempt to suicide) as unconstitutional.
1996	In GianKaur’s case ⁴⁸ , a constitution bench of the SC (five judge, headed by Justice J S Verma) overruled the 1994 verdict stating that the right to life does not include right to die and upheld the validity of Section 309).
2008	Law Commission favoured scrapping of Section 309 of the IPC in 210 th report on “humanization and decriminalization of attempt to suicide”
March 7, 2011	Supreme Court had recommended to Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic, while giving guidelines for passive euthanasia.
September, 2011	25 out of 29 stated agreed to the proposal to bring amendment to delete section 309 of IPC.
2012	Drafting and Consultations for Mental Health Care Act.
August 19, 2013	Mental Health Care Bill introduced in RajyaSabha (upper house), pending approval of Parliament. Still to be formed as an act.
March, 2017	Mental Health Care Bill, passed in Lok sabha

MENTAL HEALTH CARE Act, 2017 –A successful story:

“We as a society are slowly recognizing that a healthy mind is most essential for a healthy body. The Mental Healthcare Bill is a very progressive development and a milestone in improving healthcare in India “

- **P.M. Narendra Modi**

The first and the foremost feature of the bill is that a person attempting suicide shall be presumed, though rebuttable, to be suffering from severe stress (the words ‘mental illness’ in the old Bill substituted with ‘severe stress’) and hence, exempt from trial and punishment. The Mental Healthcare Bill, 2013, mandated certain clauses which allow the mentally ill

⁴⁸GianKaur V. State of Punjab, (1996) 2 SCC 648

person the right to live with dignity and without any discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, or disability.

The Bill guarantees every person shall have a right to access mental health care and treatment from mental health services run or funded by the appropriate government. The Bill also mandates free treatment for such persons if they are homeless or belong to Below Poverty Line, even if they do not possess a BPL card.

The Bill empowers the government to set-up Central Mental Health Authority at national-level and State Mental Health Authority in each and every State. Every mental health institute and mental health practitioners including clinical psychologists, mental health nurses and psychiatric social workers will have to be registered with this Authority.

The Bill completely prohibits Electro-compulsive therapy (“ECT”) in case of emergency treatment. It also prohibits ECT without muscle relaxants and anesthesia. ECT is also completely prohibited for minors except with informed consent of the guardian. A person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code. The 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.

The Bill also imposes duty on the police officer in charge of police station to take care of the persons who are mentally-ill within the limits of the police station. The Bill seeks to remove the stigma attached to mental illness. It makes effort to secure equal treatment for persons with mental illness and those with physical illness.⁴⁹

MENTAL HEALTH CARE Act, 2017 –A successful story:

“We as a society are slowly recognizing that a healthy mind is most essential for a healthy body. The Mental Healthcare Bill is a very progressive development and a milestone in improving healthcare in India “

P.M. Narendra Modi

The first and the foremost feature of the bill is that a person attempting suicide shall be presumed, though rebuttable, to be suffering from severe stress (the words ‘mental illness’ in the old Bill substituted with ‘severe stress’) and hence, exempt

⁴⁹ <http://www.livelaw.in/need-know-new-mental-healthcare-bill-2016/>

from trial and punishment.

The Mental Healthcare Bill, 2013, mandated certain clauses which allow the mentally ill person the right to live with dignity and without any discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, or disability.

The Bill guarantees every person shall have a right to access mental health care and treatment from mental health services run or funded by the appropriate government. The Bill also mandates free treatment for such persons if they are homeless or belong to Below Poverty Line, even if they do not possess a BPL card.

The Bill empowers the government to set-up Central Mental Health Authority at national-level and State Mental Health Authority in each and every State. Every mental health institute and mental health practitioners including clinical psychologists, mental health nurses and psychiatric social workers will have to be registered with this Authority.

The Bill completely prohibits Electro-compulsive therapy (“ECT”) in case of emergency treatment. It also prohibits ECT without muscle relaxants and anesthesia. ECT is also completely prohibited for minors except with informed consent of the guardian.

A person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code. The 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.

The Bill also imposes duty on the police officer in charge of police station to take care of the persons who are mentally-ill within the limits of the police station. The Bill seeks to remove the stigma attached to mental illness. It makes effort to secure equal treatment for persons with mental illness and those with physical illness.⁵⁰

⁵⁰ <http://www.livelaw.in/need-know-new-mental-healthcare-bill-2016/>

CURRENT LEGAL STATUS OF SECTION 309 OF I.P.C:

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 bill said. The Mental Health Care Bill, 2013, which was passed by the Rajya Sabha on 8th August 2016, ensures every person shall have a right to access mental health care and treatment from mental health services run or funded by the appropriate government. It also guarantees free treatment for such persons, if they are homeless or poor, even if they do not possess a Below Poverty Line card⁵¹.

One of the clauses in the bill decriminalizes suicide, stating that a person who attempts suicide should be presumed to have severe stress, and shall not be punished. As per the bill, it will be government's 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 any attempt.

.Suicide is not a criminal act any more but a mental disease; it has been decriminalized by houses of Parliament. It is a right step taken by the government as Punishment to survivors is not the solution, but counseling would definitely help them. Yet there are insufficient numbers of psychiatrists in India. According to Mental Health

Care Bill, there are only 5000 psychiatrist in India, whereas at least 8500 more were needed.

A person who attempts suicide shall be presumed to be suffering from mental illness at that time and will not be punished under the Indian Penal Code. The 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.

⁵¹ "After deleting Section 309". THE INDIAN EXPRESS. 2014-12-22. Retrieved 2015-12-09 "Government decriminalizes attempt to commit suicide, removes section 309 - TOI".

CONCLUSION:

Suicide occurs in all ages and we should remember that life is a gift given by God and he alone can take it. Unsuccessful attempts to commit suicide may be 'cry for help', but in spite of helping those people, government inflicts punishment on those persons. To some people, suicide is unacceptable but for some people it is the only solution for them to get rid of their problem but it would be cruel and monstrous act to inflict further suffering on a man who has already found his life so unbearable. The above discussion clearly indicates that section 309, I.P.C does not fulfill all the requirements of the constitutional provisions and is ineffective to the law.

The decision to repeal Section 309 should not be treated as a license to die, but as an opportunity for the Government, society and everyone around to assist, support and care for those in agony, the social responsibility to prevent suicides and protect our fellow-beings has only enlarged over time.⁵² And also at the same time it must be ensured that those who tend to abuse or misuse the same in one way or the other must be strictly dealt with in accordance with law.⁵³ The purpose of law is only to serve the people and not to scare people.

⁵² <http://www.thehindu.com/opinion/letters/section-309/article6686904.ece>

⁵³ Hemant Kumar, Decriminalizing attempt to suicide, *LAWYER'S UPDATE* (Nov. 2011),

<http://lawyersupdate.co.in/LU/8/644.asp> (Last visited on Feb. 24, 2014)