SUICIDE AND CRIMINAL LAW: BETWEEN MORALITY, LAW, AND MENTAL HEALTH

Abstract

This paper traces the long journey of section 309 of the Indian Penal Code. For more than 160 years, attempted suicide was considered a crime. The law treated suicide not as a private tragedy but as an offence against the state. Its roots were in English common law, which saw suicide as both a sin and a crime. Colonial lawmakers also followed utilitarian ideas that valued life as a resource for society. On the other hand, ancient Indian texts allowed some forms of self-death, such as renunciation or duty, but the colonial code ignored these differences and imposed a uniform ban.After independence, section 309 came into conflict with constitutional rights. The courts were divided. In *P. Rathinam*, the Supreme Court said the right to life included a right to die. Later in *Gian Kaur*, the Court upheld the section. The Law Commission also gave shifting views, sometimes defending the law, sometimes asking for repeal.A turning point came with the Mental Healthcare Act, 2017. It presumed that anyone attempting suicide was under severe stress and should receive care, not punishment. Finally, the Bharatiya Nyaya Sanhita, 2023, repealed section 309. This marked a shift from punishment to compassion and aligns with the constitutional values of liberty, and human dignity.

I Introduction

THE REORIENTATION of Indian criminal law resulted in the removal of section 309 from the Indian Penal Code, 1860 (hereinafter IPC),[1] with the provision notably omitted from its successor, the Bharatiya Nyaya Sanhita, 2023 (hereinafter BNS).This legislative act concludes a long and contentious history. It effectively decriminalized the act of attempted suicide that had been a punishable offense for over 160 years, under section 309 of the IPC.[2] This development reflects a remarkable shift in our understanding of suicide.Thus, it is essential to trace the intellectual and legal lineage of the now-defunct law.

The state and religion have historically responded to individual vulnerability who attempted suicide by redefining it as criminal liability,[3] one against the law, other

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1 The Indian Penal Code, 1860 (Act 45 of 1860).

2 *Id.,* s.309, 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.

3 Rajiv Radhakrishnan and Chittaranjan Andrade, "Suicide: An Indian Perspective" 54(4) *Indian Journal of Psychiatry* 305 (2012).

against God.[4] This paper argues that in the modern welfare state, it was a legislative error to turn human suffering into legal responsibility. The criminalization of attempted suicide is an unusual thing in legal systems all over the world. It punishes being weak instead of hurting others and even when there was no evidence that the threat of prosecution had a deterrent effect.[5]

The law prosecuted based on medical crisis rather than criminal intent.Parallel to this is a recurring thought which denies agency (as free will) to the suicidal person by invoking universal causes that are beyond the individual's (conscious) control and possibly outside of their personhood altogether, such as depression, serotonin levels, gender, genetics, sexual orientation, or financial crises.[6]Stengel defines attempted suicide practically as, any deliberate act of self-damage which the person committing the act could not be sure to survive.[7]This definition avoids judging the act's genuineness and instead focuses on the individual's subjective risk.This behavior, he described as "Janus-faced,"which means it is simultaneously directed toward death and destruction on one side, and toward life and human contact on the other. It reflects a deep state of ambivalence where the person wants both to die and to live at the same time.

Émile Durkheim classified suicides into three types, based on the nature of the individual's relationship with society.[8]*Egoistic* suicide occurs when excessive individualism weakens social bonds, leaving a person detached from communal life.[9]*Altruistic* suicide, on the other hand, arises from an overwhelming sense of duty toward the community,[10] where self-destruction is seen as serving a larger cause. *Anomic* suicide stems from society's inability to regulate and guide individual behavior, often in times of social disruption.[11] Indian farmers' suicides are often explained through *anomic* suicide, as

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4 For example, English law treated self-destruction as a dual transgression, an offence against both God and King.

5 Erwin Stengel, *Suicide and Attempted Suicide* 122 (Penguin Books, England, 1st edn., 1964).

6 Daniel Munster and Ludek Broz, "The Anthropology of Suicide: Ethnography and the Tension of Agency" in Ludek Broz and Daniel Munster, (eds.), *Suicide and Agency: Anthropological Perspectives on Self- Destruction, Personhood, and Power* 5 (Ashgate Publishing Company, USA, 1st edn., 2015).

7 *Supra* note 5 at 83.

8 Emile Durkheim, *Suicide: A Study in Sociology* George Simpson (ed.), John A. Spaulding and George Simpson (Tr.), 14 (Free Press, 1997).

9 This type of suicide was the effect of the individual's lack of concern for the community and inadequate involvement with it.

10 This category belonged the old and sick who wanted to relieve society of themselves; the women who followed their husbands into death; the followers or servants who killed themselves on the death of their chiefs.

11 The decline of religious beliefs, the excessive relaxation of professional and marital codes were manifestations of anomie. Durkheim called anomie a state which failed to control and regulate the behaviour of individuals.

they stem from economic instability, indebtedness, crop failures, and sudden policy or market disruptions that weaken social and economic regulation. In some cases, elements of altruistic suicide also appear, where farmers sacrifice themselves believing their death might relieve their families from debt burden or draw attention to their community's plight.

Section 309 of the IPC established a unique legal precedent wherein survival itself was deemed culpable.[12] The failure to carry out an act of self-destruction became a basis for state punishment. This legal anomaly had exposed the underlying forces that influence societal responses to human suffering.This paper argues that what appears to be a progressive reform influenced by mental health discourse is, in truth, the final act in a much older story. It is, in fact, the resolution of a deep historical struggle, between the flexible, context-driven ideas of ancient India and the rigid, colonial laws introduced in the 19th Century.

II Moral foundations of attempt to suicide

The moral underpinnings on Suicide in India are deeply rooted within the historical perspectives on suicide from both Indian and British traditions. It reflects an interaction of condemnation, glorification, and pragmatic legal codification, which the IPC introduced.This history unfolds across three distinct phases. Ancient India offered a meticulous view which condemned suicide but permitted it under rare and regulated circumstances. England then introduced the rigid doctrine of *felo de se*, which is built on Christian morality and the principle of total state sovereignty. Finally, Macaulay's colonial codification erased India's legal pluralism by importing this foreign model under the banner of a universal and utilitarian jurisprudence. S. 309, which is born of Victorian morality and imposed through the IPC, was never truly Indian in spirit. Its repeal is thus more than a statutory reform, it is a decolonial correction, closing a chapter of legal history that began with Macaulay's Code.

Ancient Indian thoughts

In ancient Indian thought, suicide was not uniformly condemned but evaluated through a lens of religious, philosophical, and social contexts. It has a moral framework that resisted simple condemnation. It instead evaluates the act through its spiritual, ethical, and social contexts.It contains almost no approvals and largely symbolic gestures. Vedic texts such as the *Yajur Veda* uphold the principle of *ahimsa* (non-violence). An interpretation may extend this even to self-harm.[13]

12 V.R. Jayadevan, "Right of the Alive who but has No Life At All"- Crossing the Rubicon From Suicide To Active Euthanasia"53(3) *Journal of Indian Law Institute* 437-473 (2011).

13 Yajurveda, verse 12 (32), cautions against using the body to destroy any of God's creatures, which a directive some scholars interpret as implicitly forbidding suicide.

Upanishads discusses the metaphysical ideas of the eternal Self (*Atman*), rebirth, and the cyclical process of life. Certain texts, like *Manusmriti*, permitted voluntary death, through fasting or even drowning, only once an individual had attained full maturity and fulfilled worldly duties.[14]This allowance was tied not to despair but to the disciplined pursuit of renunciation, where the body was seen as an instrument that could be willingly relinquished once its purpose was fulfilled.By contrast, the texts sternly warned against suicide motivated by grief, suffering, or hopelessness, declaring that such acts condemned the soul to a "sunless" realm. For *e.g.,* the *Isha Upanishad* adds a further layer and warns in that those who "kill the self" enter dark realms.[15] The *Manusmriti* reflects this complexity by denying funeral rites to dishonourable suicides,[16]while simultaneously sanctifying *prayopavesa*, voluntary fasting to death by spiritually fulfilled elders.[17]

The idea that death could be approached voluntarily under certain conditions appears in the writings of *Govardhana* and *Kulluka* on *Manu*.[18] They held that *Mahaprasthana*, or the great departure, was acceptable when one faced incurable disease or overwhelming misfortune.

Epic literature, too, presents suicide with ambivalence, the *Ramayana* and *Mahabharata* portray acts by *Sita* and *Madri* as expressions of devotion or honour rather than moral failure. Jainism formalized this ethos in the practice of *Sallekhana*.[19] It was a regulated, conscious embrace of death for the aged or terminally ill which may be valorised and preferred over a prolonging suffering. The philosophical justification for *sallekhana* rested on the belief that conscious, voluntary death undertaken with

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14 Suicide- The Hindu Perspective, *available at*: https://theactionalliance.org/sites/default/files/2018_hindu_perspective_final.pdf (last visited on Jun. 23, 2025).

15 *Ibid.*

16 Manusmriti, verse 5 (88), Libations of water shall not be offered to those who (neglect the prescribed rites and may be said to) have been born in vain, to those born in consequence of an illegal mixture of the castes, to those who are ascetics (of heretical sects), and to those who have committed suicide.

In the Chapter on 'the hermit in the forest', Manu Code says-

31. Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to rest.

32. A *Brahmana* having got rid of his body by one of those modes (drowning, precipitating burning or starving) practiced by the great sages, is exalted in the world of *Brahmana*, free from sorrow and fear.

17 Laws of Manu, translated by George Buhler, Sacred Books of the East edited by F.Max Muller, (1967 Reprint) Vol. 25, page 204, Shlokas 31 and 32.

18 Ganganath Jha, *Manusmrti: With the Manubhasya of Medhatithi* (Motilal Banaridass International, reprint, 2023).

19 Manisha Sethi, "Ritual death in a secular state: the Jain practice of Sallekhana"10(2) *South Asian History and Culture* 136-151 (2019).

proper spiritual preparation was superior to sticking to life in circumstances of great suffering.[20]

Archaeological evidence, such as inscriptions memorializing *Jauhar*, which was a form of collective self-immolation in defeat, further demonstrates how cultural attitudes framed suicide in terms of intent, which is condemnable when born of despair or cowardice, but elevated when linked to spiritual discipline, honour, or voluntary renunciation.

In this way, ancient Indian perspectives diverged from more absolutist prohibitions found elsewhere, thus, a blanket criminalization was alien to this intellectual tradition and somewhat privileges a contextual ethics of death which is rooted in the idea of *ichha-mrtyu*, the willed embrace of death by the spiritually accomplished, like, the sage *Dadhichi* sacrificed his life so that the Gods may use his bones in the war against the demons.[21]

Christian morality and legal prohibition

The moral and legal framework that Thomas Babington Macaulay inherited when drafting the Indian Penal Code was fundamentally shaped by Victorian Christian morality and centuries of English common law development. This perspective had deep roots in English legal history, with suicide considered a felony under common law.[22]English common law had criminalized suicide since at least the 13th century which treats it as a form of murder committed against oneself.[23] The church had already condemned it as moral sin. Suicide was a direct violation of the Sixth Commandment of bible, "Thou shalt not kill", its core message prohibits the willful taking of human life which has the sanctity of a divine gift.The Old Testament of bible records four cases of suicide (*Samson*, *Saul*, *Abimelech*, and *Ahitophel*), and gives no indication that they were frowned upon. The last, Ahitophel, is recorded to have received due burial in the sepulchre of his father.[24]

For a death to be declared *felo de se* (felon of himself), it had to be proven that the person was *sane* and it is often against state. The punishment resulted in forfeiture of the deceased's property to the Crown and ignominious burial practices aimed at symbolically dishonoring the corpse.[25] The body was carried to a crossroads in the

20 *Id.* at 138.

21 *Supra* note 3 at 305.

22 Glanville Williams, *The Sanctity of Life and the Criminal Law* (London, 1968).

23 Gerry Holt, "When suicide was illegal"*BBC*, August 03, 2011, *available at*: https://www.bbc.com/news/magazine-14374296#:~:text=%22Self%2Dmurder%22%20became%20a,proved%20the%20person%20was%20sane (last visited on July 10, 2025).

24 *Supra* note 22 at249.

25 Julie Mathias, "Victorian Attitudes Towards Self-Murder", *Curious* Histories, November 11, 2016, *available at*: https://oldoperatingtheatre.com/victorian-attitudes-towards-self-murder/ (last visited on July 21, 2025).

dead of night, dumped into a pit with a wooden stake driven through the body, without clergy, mourners, or prayers.[26] The deceased's family were stripped of their belongings, which were handed to the Crown.[27]This practice persisted well into the 19th century, as evidenced by the 1811 case of John Williams, who was buried at a crossroads with a stake through his heart after dying by suicide while awaiting trial for murder.[28] These aftereffects of the suicide thus aimed for creating a deterrence to the others.

A significant shift away from this severity began in the latter half of the 17th century which was not driven not by any formal change but by the actions of juries.[29] Increasingly, these juries began to return verdicts of *non compos mentis* (not of sound mind) in cases of suicide. It created a legal fiction that allowed communities to express sympathy for the bereaved family. But another consequence of this was that the middle-class families took pains to conceal self-destruction, not only because suicide was illegal and considered immoral but also because the insanity plea was the only way of preventing the property of a proven suicide from reverting to the Crown. Families faced an agonizing choice between accepting the stigma of hereditary mental illness and facing financial ruin through property forfeiture.[30]

Thus, this 'insanity defense' became so universal that by the late 18th Century, it was the standard verdict in over 97 percent of suicide cases.[31]This gradual medicalization of suicide continued into the Victorian era of the 19th century. While the most barbaric post-mortem punishments were being formally abolished, i.e., burial at crossroads was outlawed in 1823,[32] and the forfeiture of property was ended in 1870.[33] In a way, suicide itself remained a source of profound social anxiety, shame, and disgrace.

Many countries never treated suicide as a crime and some even saw it as an honourable choice. For example, *Samurai* warriors in Japan practiced *seppuku* to avoid dishonour,[34] and in ancient Athens, poison was kept for those who wished to die, *Socrates* himself

26 Michael Macdonald and Terence R. Murphy, *Sleepless Souls: Suicide in Early Modern England* (Clarendon Press, 1st edn., 1990).

27 *Ibid.*

28 *Ibid.*

29 *Ibid.*

30 Barbara Gates, *Victorian Suicide: Mad Crimes and Sad Histories* (Princeton University Press, 2016).

31 *Supra* note 26.

32 The Burial of Suicides Act, 1823 (UK).

33 The Forfeiture Act, 1870 (UK).

34 Joseph M Pierre, "Culturally sanctioned Suicide: Euthanasia, Seppuku, and Terrorist Martyrdom"5(1) *World Journal of Psychiatry* 4-14 (2015).

used it to end his life.[35] In Athenian law the hand that committed the suicide was cut off and buried apart from the rest of the body, which was denied the usual solemnities.[36]In contrast, England and Wales punished suicide as a crime until 1961,[37] which makes them among the last in Europe to end this practice.By the time Macaulay and his colleagues began drafting the IPC, English law had theoretically abolished the more barbaric practices associated with suicide punishment, but the fundamental criminalization remained.[38]

However, before enactment of IPC, the privy council presented the colonial understanding in one of the cases while commenting that: [39]

> Self-destruction, though treated by the law of England as Murder, and spoken . . . as the worst of all Murders, is really, as it affects society, and in a moral and religious point of view, of a character very different not only from all other Murders, but from all other Felonies. These distinctions are pointed out with great force and clearness in the notes attached to the Indian Code, as originally prepared by Lord Macaulay and the other Commissioners. The truth is, that the act is one which in countries not influenced by the doctrines of Christianity has been regarded as deriving its moral character altogether from the circumstances in which it is committed: –sometimes as blamable, sometimes as justifiable, sometimes as meritorious, or even an act of positive duty.

III Colonial legal transplantation and drafting of section 309

The inclusion of a provision criminalising attempted suicide in the Indian Penal Code (hereinafter IPC) was a deliberate act of legal transplantation. This was driven by the specific ideological currents and colonial imperatives of the 1830s. The IPC was drafted primarily by Thomas Babington Macaulay as the President of the First Law Commission of India. It was a monumental project which was aimed at replacing the existing patchwork of Hindu and Mahomedan laws with a single, rational, and comprehensive criminal code. Macaulay's introductory notes to the code make it clear that he and his fellow commissioners held the existing indigenous legal systems

35 Socrates, who drank poison by judgment of the court, thought that it did not become any one to end his own life before God had imposed some necessity of doing it upon him.

36 *Supra* note 22 at 251.

37 The Suicide Act, 1961, s.1, The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated.

38 There is some consensus that the English criminal justice system had largely abandoned a punitive approach towards the act of suicide before 1811: "after 1760 or so juries virtually stopped punishing suicide". However, suicide remained a crime throughout the whole period under consideration.

39 *Advocate General of Bengal* v. *Ranee Surnomoye Dossee*, 9 M.I.A. 387, decided on 30.06.1863.

in low regard.[40]His famous "Minute on Indian Education" of 1835 reveals his fundamental belief in the superiority of Western Christian civilization over what he dismissively characterized as the superstition and barbarism of Indian culture. This civilizational confidence provided the moral justification for wholesale legal transformation of Indian society through the imposition of Western legal principles.

The IPC was designed to be a model of law-making which include *comprehensibility* (easily understood); *accessibility* (the law is contained in a code, not buried in case law); *precision* and *certainty* (the language and expression are not loose or vague); and *democracy* (the criminal law is primarily the responsibility of a democratically elected legislature, not of judges, and the Code should therefore be as comprehensive as possible).[41] It is based on the utilitarian principle of maximizing the greatest good for the greatest number, while minimizing the discretion of judges.It was within this intellectual framework that the decision to criminalize attempted suicide was made.

It suggests that the inclusion of the provision was considered entirely uncontroversial and logical to its drafters. Thus, a straightforward reflection of the legal consensus in England at that very time.The justification must be inferred from the broader principles that animated the entire colonial project. From a purely utilitarian perspective, which the drafters were inspired, the life of an individual is a resource, a unit of potential productivity and social contribution. Suicide, therefore, represents a net loss of utility to the state and society.

Thus, criminalising the attempt to commit suicide serves a clear utilitarian purpose, *i.e.,* deterrence. Punishing a failed attempt might inflict pain upon a single distressed individual, the law's deterrent effect is intended to prevent a far greater number of successful suicides.[42]

The provision served a crucial function of colonial governance, beyond this philosophical rationale. The enactment of a uniform penal code was as a form of "moral conquest," a means of establishing a system of law that would regulate the daily lives of the Indian populace and thereby make British rule more effective and legitimate.The colonial state was making a powerful assertion of its ultimate sovereignty over the life and body of each of its subjects. This legal declaration effectively overrode and delegitimized the complex and nuanced moral frameworks of indigenous

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40 The Draft of The Indian Penal Code, 1837, none of the systems of penal law established in British India has any claim to our attention. All those systems are foreign. All were introduced by conquerors differing in race, manners, language, and religion from the great mass of the people.

41 S. Yeo, N. Morgan and W. Chan, *Criminal Law in Malaysia and Singapore* (LexisNexis, Singapore, 2007).

42 Sree Latha and N Geetha, "Criminalizing Suicide Attempts: Can it be a deterrent?" 44(4) *Medicine, Science and the Law* 343-347(2004).

Indian traditions, which, as discussed, permitted certain forms of self-destruction. S. 309 was, thus, more than just a penal provision; it was an instrument of power, a legal arsenal for imposing a foreign morality and asserting the state's claim as the ultimate peacemaker of life and death.

Early enforcement patterns and colonial context

Following its enactment in 1860, section 309 of the IPC performed unevenly, navigating a landscape of cultural resistance and inconsistent application. The section's language provided the administration with a powerful tool to intervene in aspects of Indian life that it deemed morally repugnant. One of the primary domains for the application of sction 309 been the enforcement of colonial morality against indigenous customs, *i.e.,* most notably the practice of *Sati*. The British administration viewed this practice as evidence of a barbaric culture that the civilizing mission of colonialism was duty-bound to eradicate.While the Bengal Sati Regulation,[43] had already outlawed the practice, the IPC provided a new, pan-Indian legal framework. Section 309, along with the provisions on abetment of suicide (section 306),[44] could be used to prosecute not only those who encouraged or forced a widow to commit the practice but also the woman herself if she survived the attempt.

The High Court of Allahabad dealt with a woman who tried to end her life after suffering abuse in her marriage.[45] The court found her guilty under section 309 but gave her only one day of imprisonment. The judges noted that social pressures, such as dowry disputes, often pushed women into such acts. Still, the court said the law must focus on protecting social order. It relied on Macaulay's original drafts, which treated punishment as a way to deter people rather than to show sympathy.

The second, and perhaps more significant, function of section 309 was as a legal weapon for the suppression of political dissent.The hunger strike, or fast unto death, has a long history in India as a powerful and symbolic form of non-violent protest, frequently employed by nationalist freedom fighters.This act immediately depoliticized their protest by transforming it from a legitimate expression of dissent into a common crime.

IV Post-constitutional treatment of section 309

The adoption of the Indian Constitution, subjected all pre-existing laws, including the colonial-era Indian Penal Code, to the rigorous test of fundamental rights.[46] Thus, Section 309 faced intensified scrutiny through judicial interpretations that pitted it

43 The Bengal Sati Regulation, 1829.

44 *Supra* note 1, s.306, 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.

45 *Emperor* v.*Dhirajia*, AIR 1940 All 486.

against art. 21.The ensuing seven decades witnessed a complex and often contradictory journey.

Early post-independence courts upheld the provision's constitutionality,as in the 1960s cases where convictions for attempts amid poverty or illness resulted in minimal sentences.

The Law Commission of India in its 42nd Report,[47]recommended the repeal of section 309. The reasoning was that the provision was 'harsh and unjustifiable' and an anachronism in a modern penal code. The report examined ancient Indian texts like the *Dharma Shastras*, which permitted certain forms of self-termination. This recommendation led to the introduction of the Indian Penal Code (Amendment) Bill, 1978,[48] which passed in the Rajya Sabha but lapsed before it could be passed by the Lok Sabha.

However, the 1980s marked a turning point with challenges under art. 14 and article 21; in *State* v. *Sanjay Kumar Bhatia*,[49] the High Court of Delhi critiqued section 309 as anachronistic, arguing it hounded distressed individuals rather than providing care.[50] Soon thereafter the High Court of Bombay in *Maruti Shripati Dubal* v. *State of Maharashtra*,[51] speaking through Sawant, J., as he then was, examined the constitutional validity of s. 309 and held that the section is violative of article 14 as well as article 21 of the Constitution.

The High Court Andhra Pradesh also considered the constitutional validity of section 309 in *Chenna Jagadeeswar* v. *State of Andhra Pradesh*,[52]rejected the argument that article 21 includes the right to die. The court also held that the courts have adequate power to ensure that "unwarranted harsh treatment or prejudice is not meted out to those who need care and attention". The court also negatived the violation of article 14.

Right to life versus right to die

The first major constitutional challenge to section 309 culminated in the landmark 1994 Supreme Court judgment in *P. Rathinam* v. *Union of India*.[53] The court adopted

46 The Constitution of India, art. 13(1), All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Pan, shall, to the extent of such inconsistency, be void.

47 Law Commission of India, "42nd Report on Indian Penal Code, 1860" (June, 1971).

48 The Indian Penal Code (Amendment) Bill, 1978, cl. 131, the existing s. 309 which makes attempt to commit suicide punishable is sought to be omitted.

49 1985 Cr LJ 931.

50 The court also commented that, instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with criminals, need is for humane, civilized and socially oriented outlook and penology.

51 1987 Cr LJ 743.

52 1988 Cr LJ 549.

53 MANU/SC/0433/1994.

an expansive interpretation of article 21 of the Constitution and declared section 309 unconstitutional. The reasoning was based on the theory of negative rights. It argued that if a fundamental right has a positive dimension, it must logically also have a negative one. For instance, the right to freedom of speech and expression under article 19 implies the right *not* to speak, or to remain silent.Applying this same logic to article 21, which guarantees the "protection of life and personal liberty," the court concluded that the "right to life" must necessarily include a right not to live a forced life,[54] or, more starkly, a "right to die". The court characterized section 309 as a cruel and irrational provision and stated that it punishes a person twice, once by the agony of their circumstances that led to the attempt, and again by the ignominy of a criminal prosecution. Suicide was often a manifestation of a psychiatric problem but not a criminal instinct, and that such individuals required compassion and care, not imprisonment. This decision was hailed as a progressive step towards humanizing India's penal laws.

For a brief, two-year period, it seemed that the debate was settled. The judiciary had spoken, and the message was one of progressive reform. But this interpretation proved to be exceptionally short-lived!

Just two years later, in 1996, a five-judge Constitution Bench of the Supreme Court in the case of *Gian Kaur* v. *State of Punjab*,[55] was called upon to consider the validity of section 306 (abetment of suicide) in light of the *P. Rathinam* ruling.The larger bench took the opportunity to reconsider the entire premise of the earlier judgment and categoricallyoverruled it. The court held that the analogy of negative rights was flawed when applied to the right to life. While the negative aspect of the right to speech (silence) does not extinguish the right-holder, the negative aspect of the right to life (death) is an irreversible act that terminates the very subject of all rights. The court reasoned that the "right to life" is a natural right, and its scope is to preserve and protect life, not to extinguish it. It termed the right to die an unnatural extinction of life,[56] and therefore fundamentally inconsistent with the concept of the right to life enshrined in article 21. Court noted that: [57]

> When a man commits suicide, he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the 'right to life' under art. 21. The significant aspect of 'sanctity of life' is also not to be overlooked. Art. 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to be

54 *Id.,* para 35.

55 (1996) 2 SCC 648.

56 *Id.,* para 19.

57 *Ibid.*

> included in 'protection of life'. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe art. 21 to include within it the 'right to die' as a part of the fundamental guaranteed therein. Right to life is a natural right embodied in art. 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life.

Consequently, the court upheld the constitutional validity of both section 309 and section 306 of the IPC.

However, despite the firm rejection of a generalized right to die, the *Gian Kaur* judgment introduced an enduring concept of the right to die with dignity, into Indian constitutional jurisprudence. The court managed to slam one door shut while simultaneously opening another, more nuanced one. It was a strategic reframing of the entire national conversation; thus, law commission again took up the task.

The Law Commission recommended the retention of section 309 in its 156th Report in 1997.[58] This was a stunning reversal. What could possibly explain such a stark departure from its previously held humane position? The change of heart was a direct response to the Supreme Court's 1996 judgment in *Gian Kaur*, which had just affirmed the constitutional validity of the provision.The Commission's new logic was grounded in pragmatism and national security concerns.[59]This report thus carved out a distinction between those who attempt suicide for psychological reasons and those who do so to further criminal enterprises.

And just like that, the pendulum swung back. The final and most decisive intervention from the Commission came in its 210th Report in 2008.[60] The Commission reverted to its original position and made a comprehensive case for repeal.It branded section 309 as "inhuman" and argued that an attempt to commit suicide should be regarded as a "manifestation of a diseased condition of mind deserving treatment and care rather than an offence to be visited with punishment." Thus, punishing an already

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58 Law Commission of India, "Report on Indian Penal Code" (Aug, 1997).

59 *Id.* at 133, para 8.16, Certain developments such as rise in narcotic drug- trafficking offences, terrorism in different parts of the country, the phenomenon of human bombs, etc. have led to a rethinking on the need to keep attempt to commit suicide an offence. For instance, a terrorist or drug trafficker who fails in his/her attempt to consume the cyanide pill and the human bomb who fails in the attempt to kill himself or herself along with the targets attack, have to be charged under of s. 309 and investigations be carried out to prove the offence. These groups of offenders under s. 309 stand under a different category than those, who due to psychological and religious reasons, attempt to commit suicide. Accordingly, we recommend that section 309 should continue to be an offence under the Indian Penal Code.

60 Law Commission of India, "Report on Humanization and Decriminalization of Attempt to Suicide"(October, 2008).

suffering individual was "unjust and unfair" and that the law was counterproductive, as it did not deter suicides and, in fact, often prevented vulnerable people from seeking or receiving timely medical care. The Commission cited the global consensus on the issue, referencing the views of the World Health Organization, the International Association for Suicide Prevention, the Indian Psychiatric Society, and the fact that almost all countries in Europe and North America had decriminalized the act. Beyond Europe and North America, many countries in Asia, Africa, and Latin America have gradually moved toward decriminalization which reflects a worldwide shift from punitive frameworks to approaches emphasizing mental health care, prevention, and social support systems. This perspective reinforces that criminalizing suicide is increasingly seen as inconsistent with contemporary human rights standards and effective public health strategies.

The euthanasia debates

The history of the concept of euthanasia is closely associated with human dilemmas involved in advanced old age and severe illness.[61] The conceptual framework of a "right to die with dignity," articulated in *Gian Kaur*, became the legal foundation upon which the Indian judiciary built its entire jurisprudence on end-of-life care and euthanasia.In this case the Supreme Court approved the House of Lords judgment in *Airedale's* case,[62] and observed that euthanasia could be made lawful only by legislation.The first major case to operationalize this principle was the case of *Aruna Shanbaug* v. *Union of India*.[63] The facts were

> Aruna Shanbaug, a nurse, had been in a persistent vegetative state (PVS) for 37 years following a brutal sexual assault. A petition was filed seeking to end her suffering by withdrawing her nutrition. The Supreme Court, after a thorough examination of her condition and the unwavering care provided by the staff of KEM Hospital, ultimately rejected the specific plea for Shanbaug's euthanasia. The Court held that the hospital staff, who had lovingly cared for her for decades, were her true guardians, and their wish to continue caring for her had to be respected.

Despite the rejection of the specific plea, the *Aruna Shanbaug* judgment was a landmark moment. For the first time, the court explicitly legalized passive euthanasia. It is defined as the withdrawal of life-sustaining medical treatment, including ventilators and artificial nutrition.It mandated that any decision to withdraw life support for an incompetent patient must be approved by the respective high court. The courts under the principle of *parens patriae* will ensure the decision was in the patient's best

61 Subhash Chandra Singh, "Euthanasia and Assisted Suicide: Revisiting the Sanctity of Life Principle" 54(2) *Journal of Indian Law Institute* 196-231 (2012).

62 *Airedale N.H.S. Trust* v. *Bland*, (1993) AC 789.

63 (2011) 4 SCC 454.

interest and to prevent any potential misuse.

Do not resuscitate orders

This decision also brought into focus the practical application of end-of-life care, including the concept of Do Not Resuscitate (for brevity DNR) orders.A DNR order is a medical directive that instructs healthcare providers not to perform cardiopulmonary resuscitation (CPR) if a patient's breathing or heart stops.[64] DNR orders in India have long existed in a legal grey area and often based on verbal communications between doctors and families rather than a documented legal process. The Indian Council of Medical Research (ICMR) has issued consensus guidelines on "Do Not Attempt Resuscitation" (DNAR), clarifying that such orders relate only to CPR and are appropriate for terminally ill patients where resuscitation would be futile or merely prolong suffering.[65]

The jurisprudence on end-of-life dignity reached its zenith in the 2018 case of *Common Cause (A Registered Society)* v. *Union of India.*[66] In this case, a Constitution Bench of the Supreme Court took the principles laid down in *Gian Kaur* and *Aruna Shanbaug* to their logical conclusion. The court declared unequivocally that the "right to die with dignity" is a fundamental right, within wide umbrella of article 21.

The court also took the opportunity to strongly recommend that Parliament consider the "desirability" of repealing section 309, describing the provision as anachronistic and irrational.This legal incoherence made the repeal of section 309 a matter of compassion and a logical necessity to harmonize the penal code with the evolving principles of constitutional jurisprudence.

V The ascendancy of mental health in the suicide debate

In India, the entire legal and moral architecture supporting section 309 was built on a foundation that viewed the individual as a rational actor. If the commission is stating that the section is there for suicide bombers,[67] *etc.*, then it presumes that the person is exercising his cognitive faculties and is consequence, making a rational choice. This was a very narrow aspect of broader picture. It treated the act of attempting suicide as a simple, binary choice, a willful defiance of law and order, rather than the tragic culmination of immense internal suffering.Thus, the journey

64 Do-not-resuscitate order, *available at:* https://medlineplus.gov/ency/patientinstructions/000473.htm (last visited on July 3, 2025).

65 Raj K Mani, Sushma Bhatnagar, *et.al.*, "Indian Society of Critical Care Medicine and Indian Association of Palliative Care Expert Consensus and Position Statements for End-of-life and Palliative Care in the Intensive Care Unit" 28(3) *Indian Journal of Critical Care Medicine* 200-250 (2024).

66 AIR 2018 SC 1665.

67 *Supra* note 59.

towards decriminalization, apart from a legal adjustment, is a process of chipping away the punitive edifice, which was built on colonial hangover, and replacing it with a new foundation built on compassion and empathy. The legal system gradually moved from seeing a "criminal" to recognizing a "patient," and how this fundamental change in perspective ultimately made the repeal of section 309 not just desirable, but inevitable.

Reframing the narrative

The initial legal framework was blind to the inner turmoil of the individual. A person who survived a suicide attempt was immediately thrust into the cold, impersonal machinery of the criminal justice system. It is impossible to find any rational justification for inflicting a punishment upon a person who has made an attempt to escape punishment which he thinks society is inflicting upon him. Is survival itself not sufficient punishment?[68] This approach was not only cruel but also counterproductive.

However, the first cracks in this punitive façade happened in the courtrooms. Soon after the adoption of the constitution, the courts began to voice their discomfort with law's inherent cruelty. The first serious challenges to section 309 IPC came from the courts, not the legislature. In *Sanjay Kumar Bhatia* case,[69] the Court called the law a "strange paradox" and an "anachronism,"and criticized the idea of punishing a young man for failing in his suicide attempt rather than sending him to a psychiatric clinic. Soon after, in *Maruti Shripati Dubal* case,[70] the High Court of Bombay stressed that suicide attempts stem from mental disorders requiring treatment, not prison. And this shift also visible in *Rathinam* case,[71] where the Supreme Court declared section 309 unconstitutional and observed suicide as a psychiatric problem and not a manifestation of criminal instinct. The court argued that those attempting suicide need counselling and care. It is issue of public health rather than criminal law. Though later overruled, *Rathinam* firmly embedded the mental health perspective into the legal debate and it ensured that compassion and treatment became central to discussions on decriminalizing suicide, which is evident in reiterations made to this case in later law commission reports.

The psychiatric illness constitutes a major cause for nonfatal suicidal behavior.[72] In India, suicide has shown a worrying upward trend over the past two decades. In 2002, 1,10,417 people died by suicide, and by 2012 the number had risen to 1,35,445,

68 Justice Jahagirdhar, "Attempt at Suicide- A Crime or A Cry" cited in *Supra* note 59.

69 *Supra* note 49.

70 *Supra* note 51.

71 *Supra* note 53.

72 Rajeev Ranjan, Saurabh Kumar, *et.al.*, "(De-) criminalization of attempted suicide in India: A review" 23(1) *Industrial Psychiatry Journal* 4-9 (2014).

marking an increase of 22.7%.[73] The situation has worsened further, with the National Crime Records Bureau (NCRB) reporting nearly 1.71 lakh suicides in 2022, the highest ever recorded.[74] It reflects about a 26% rise compared to 2012. The suicide rate too has reached an all-time high of 12.4 per 1,00,000 population.Research indicates that 50 to 90% of individuals who die by suicide suffer from mental illnesses such as depression, anxiety, and bipolar disorder.[75] Apart from these, in India, there is significant percentage of suicides committed by the farmers, which is primarily linked to economic issues.

The Mental Healthcare Act, 2017

With the enactment of the Mental Healthcare Act, 2017 (hereinafter MHCA), decades of advocacy on state's approach to mental illness and suicide found expression. Instead of directly repealing section 309, the act effectively neutralized it.[76] It created a rebuttable legal presumption in favor of the individual who attempts suicide.This presumption fundamentally shifted the burden of proof. The state would have to prove that the person was *not* under severe stress, then only section 309 would chip in. The Bombay high court noted that

> 7. Thus, is it apparent that the person who tried to commit suicide, enjoys a statutory presumption about mental stress and having regard to such presumption, he has been excluded from putting on trial. Though it is submitted that during trial the presumption can be lifted, however the statute itself precludes to put said person on trial.[77]

The facts of the present case were,

> Shital Dinkar Bhagat, a 26-year-old constable, attempted suicide at Lakhandur Police Station over a failed affair; the FIR under s. 309 IPC was quashed as her act was presumed to be under stress under s. 115 of the MHCA.

The court consequently quashed an FIR registered under section 309.

In another case involving atragic incident where a mother, allegedly suffering from mental agony due to her marital life, smothered her infant son and subsequently

73 *Ibid.*

74 National Crime Records Bureau, "Crime in India 2022" (Dec, 2023).

75 Nandini Singh, "India records 171,000 suicides in 2022, highest ever: NCRB report"*Business Standard,* July 12, 2024, *available at*: https://www.business-standard.com/india-news/india-records-1-71-lakh-suicides-in-2022-highest-ever-ncrb-report-124071100839_1.html? (last visited on Aug. 10, 2025).

76 The Mental Healthcare Act, 2017, s.115(1), 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.

77 *Shital Dinkar Bhagat* v. *State of Maharashtra*, 2024 SCC OnLine Bom 2765.

attempted suicide. She was convicted by the trial court for both murder under section 302 and attempted suicide under section 309. The high court, however, set aside the entire conviction and delivered a landmark ruling on the scope of section 115 of MHCA.[78] The prosecution had argued that the protection of section 115 of MHCA was limited only to the offence of attempted suicide under section 309. To which court stated

> 8. S. 115(1) of the Act, creates an embargo in conducting trial and punishing a person, who has attempted to commit suicide, not only for the offence under s. 309 IPC but also for any other offences under IPC committed in the course of the same transaction, unless it is proved that the person accused is not having severe stress.

The act went beyond this; it imposed a positive duty of care on the state.[79] This effectively transformed states role. It is no longer the prosecutor or punisher of a desperate individual, but legally obligated to be their caregiver and rehabilitator.

However, the solution was not without its own complexities.The use of the vague term 'severe stress' may create ambiguity. A blanket presumption of mental distress may have unintended consequences, particularly in cases of abetment to suicide, such as those involving domestic violence or dowry harassment. If a harassed woman who attempts suicide is automatically presumed to be suffering from severe stress, it could potentially weaken her testimony against her abusers, as her mental competence could be called into question. Similarly, in cases of farmer suicides driven by debt, a blanket medicalization of the act risks may opaque the underlying socio-economic and structural injustices that led to the tragedy.

The MHCA represented a monumental step forward, firmly establishing the primacy of the mental health perspective in the legal framework governing suicide in India.

VI The unmaking of a colonial crime

The definitive act in this long journey was the enactment of the BNS, which replaced the colonial-era IPC. It is symbolic act of decolonization apart from a legal technicality. The BNS achieved a formal, *de jure* decriminalization of attempted suicide by completely omitting any provision equivalent to section 309. This legislative endeavor finally removed the anachronistic provision from India's penal law, which was vigorously being demanded. Thus, finally it brings the statute in line with the constitutional jurisprudence and the public health approach established by the MHCA. Apart from this, it also reflects a moral recalibration that resonates with Indian wisdom discussed

78 *Sharanya* v. *State of Kerala*, (2025) KER15011.

79 S. 115(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.

in the second chapter. *Dharma Shastras* and epics recognized contexts in which it permitted self-termination, while generally condemning it. The core principle was not the act itself, but the actor's state of mind and motivation.The state is no longer making a blanket moral judgment on the act of self-destruction.Instead, it has adopted a bifurcated approach that aligns with the *dharmic* principles of compassion, resemblance in section 115(1) of MHCA and duty, resemblance in section 115(2) of MHCA.

However, it did not create a complete legal vacuum, rather introduced a new and narrowly defined offence in its place. Section 226 of the BNS criminalizes attempted suicide only under a specific circumstance.[80]The section states that, if a person attempts suicide with the sole intention of stopping the performance of a official duty by a public servant, then he or she shall be prosecuted under the provisions of this section.This new provision is a direct response to the concerns raised by some states during the decriminalization debates,[81] who feared that a complete repeal would leave law enforcement powerless against coercive protests like hunger strikes or threats of self-immolation.It reflects a fundamental redefinition of the state's interest in the matter of suicide. Under the old IPC, the state's interest was broad, paternalistic as it claimed a sovereign right over the life of every subject.[82] This broad claim has been relinquished. It is now articulated in much narrower, more functional terms.The law now only concerned with protecting the integrity and operational capacity of the administration of state. The law is no longer about saving a soul from sin or a subject from self-destruction.

VII Conclusion

The history of section 309 of the IPC, from its drafting in the 1830s to its repeal in 2023, reflects a long and layered journey of law, morality, and social change in India. A provision which is shaped by English common law's view of suicide as a crime and the utilitarian priorities of the colonial state, was later questioned, reinterpreted, by courts, law commissions, academia and finally set aside in light of constitutional ideals of liberty, dignity, and compassion.

The dawn of the Constitution in 1950 began the decades long battle for the meaning of life, liberty, and dignity. Yet, it was the quiet, persistent rise of another narrative, the issue of mental health, that ultimately changed the course.The final repeal of

80 The Bharatiya Nyaya Sanhita, 2023, s. 226, Attempt to commit suicide to compel or restrain exercise of lawful power. —Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.

81 In fact, back in 2014, the Union Government revealed in Parliament that while 22 states and union territories supported repealing s. 309, five states opposed it. Their objections included using the law to deal with hunger strikers or even to prevent suicide bombing attempts.

82 *Supra* note 12.

section 309 in the BNS is, therefore, more than a legal reform; it is a moral recalibration.India has chosen to respond to its most vulnerable people not with punishment, but with empathy and care.The law now focuses on helping those in crisis, while still allowing limited powers to prevent misuse. However, the new legal framework leaves some important questions unanswered.The new law of 2017 assumes that anyone who attempts suicide is under "severe stress." This is a compassionate rule, but it could cause problems in cases of domestic abuse.What if a husband or wife threatens or attempts suicide not because they are in pain, but to control and manipulate their partner? In these situations, the law might accidentally protect an abuser.While attempting suicide is no longer a crime, using it as a threat can still be considered "mental cruelty" in divorce cases.

The new law, section 226 punishes suicide attempts made to pressure a government official. This means if someone goes on a hunger strike or fast to protest government policies, and police try to remove them or break the fast, the case would fall squarely under this section. While this was meant to stop certain types of protests, it raises questions about balancing public safety with the right to peaceful protest.The government should clarify how this section applies to protest fasts so it does not criminalize legitimate political expression. And also,what about suicide bombers who aim to harm the public, not officials? While they cannot be charged for attempted suicide, they would face far more serious charges like terrorism and attempted murder.

Thus, the journey of section 309 is thus more than the story of a single law; it is a reflection of India's own journey towards forging a legal identity that is not merely inherited, but is consciously and constitutionally its own.

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