



## Decriminalising Suicide and Indian Scenario.

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Submitted: 20-07-2021

Revised: 29-07-2021

Accepted: 31-07-2021

### ABSTRACT:

While attempted suicide is a serious problem that requires mental health treatment, it is a criminal offence under Indian Penal Code section 309. The article highlights the global legal perspective in various parts of the world, the unintended consequences of Indian Penal Code Section 309, and the critical need for attempted suicide decriminalisation in India. Decriminalizing suicide attempts will alleviate excessive shame, avoid punishment in the aftermath of an occurrence, and result in more accurate data collection on suicide. Suicide legislation is largely unknown, and the majority of people oppose criminalising suicide. When individuals are contemplating suicide, they are averse to seeking formal assistance. One could argue that society has an ambivalent attitude toward suicide and is ignorant of the issue. Ambivalence could stem from the stigma associated with psychiatric consultation. Given these findings, it is reasonable to expect public health policymakers to consider developing initiatives to increase public awareness of Section 115 of the MHCA. Using media campaigns and hospital-based initiatives, ignorance can be eradicated. To summarise, despite the fact that Section 309 of the IPC has been in effect for 155 years, awareness is extremely low. Sec. 115 of the MHCA will also be ineffective if awareness-raising efforts are not undertaken. Additionally, follow-up research is necessary to ascertain the outcome in terms of suicide rates, assistance seeking, psychiatric referrals, and epidemiological data. The long-term consequences of this Act's implementation will become clear only with time.

**Key-words:** attempted suicide, India, decriminalising, medico-legal.

### Manuscript Body:

Suicide is the intentional act of killing oneself. According to the most recent statistics, the global crude suicide rate is 9.2, with a rate of 10.1 in South-East Asia. Europe, followed by the Americas, has the highest male-female ratio. Suicide rates are highest among middle-aged men in high-income countries (HICs), but lowest among young adults and elderly women in low- and middle-income countries (LMICs) (LMICs).

Worldwide, approximately half (52.1 percent) of suicides occur before the age of 45. 90% of adolescents who committed suicide were from LMICs, which account for 90% of the world's adolescents. [1]

### Is it morally correct to penalise suicide?

Punishment may be viewed as having contextual relevance in terms of reducing crime or preventing a socially prosecuted act from being committed again. [2] However, the question here is whether a person who attempts suicide as a result of a mental illness would face punishment if he or she survives the incident. In India, suicide attempt was a criminal offence punishable under section 309 of the Indian Penal Code, 1860. The IPC protects the integrity of human life, which is as valuable to the State as it is to its holder, by criminalising suicide attempts. The state cannot be indifferent to someone making a suicide attempt. Section 309 IPC is viewed as inhumane and irrational by some. It imposes a double penalty on a depressed individual who attempted suicide due to profound unhappiness. Additional legal penalties are inhumane when someone has already endured pain as a result of his refusal to commit suicide. [3]

### Suicide attempts in India and their legal status:

The IPC was conceptualised during the British Raj Regime of 1860 and was initially governed by British law in force at the time. India maintained the antiquated legislation despite the United Kingdom's 1961 decriminalisation of suicide. According to the 42nd law commission report (1971), Section 309 should be repealed because it is "brutal and unjustifiable." The 18th Law Commission recommended in its 210th Report, titled 'Humanization and Decriminalization of Suicide Attempts,' that suicide attempts be used to justify medical and psychological treatment rather than punishment. Suicide is not motivated by criminal instinct, as there is no such thing as mens rea. It was suggested that caring for those at risk of suicide requires prudent counselling by a therapist rather than harsh treatment by a jailor. It argued that section 309 should be repealed regardless of whether it is constitutional or unconstitutional. [4]

In a landmark 1985 decision, the Delhi High Court stated that "the continuation of Section 309 IPC (criminalising suicide) is an outmoded



concept unfit for a human society like ours." The Ministry of Health introduced the Mental Health Care Bill 2013 in Rajya Sabha in August 2013. Section 124 of the Bill decriminalises suicide attempts and imposes certain liabilities on the government in such instances. Because maintaining law and order is a state responsibility, the central government sought input on the Law Commission's recommendations from states/UTs. Previously, 18 states and four UT administrations supported the repeal of IPC Section 309. On December 10, 2014, the IPC's section 309 was repealed. According to Section 309 of the IPC's new legal status, the term "mental illness," which was used in a previous draught of the MHCA in 2013, should be replaced in the MHCA 2017 by "severe stress." Suicide attempts are discussed in Section 115 of the 2017 Mental Health and Consumer Protection Act. On April 7, 2017, India enacted the Mental Healthcare Act (MHCA) 2017, which took effect on May 29, 2018. [5] Not only was Section 309 of the IPC unjust, but it was also discriminatory. In reality, it was a vicious act that added to the individual's misery, who had already discovered life to be so miserable and intolerable, and his chances of happiness dwindling, that he had chosen to accept death and put an end to life. Torture and degrading punishment would be cruel and unjust if such a person does not attempt suicide. They deserve treatment that is fundamentally compassionate, humane, and sympathetic.

At least 90% of those who committed suicide or attempted suicide had at least one mental health disorder. Individuals who attempt suicide or self-harm are frequently in pain and frequently conflicted about death. Individuals who attempt suicide frequently do so out of desperation, rather than in defiance of religious or cultural norms. [6] This is not to say that everyone who attempted or committed suicide was suffering from a diagnosable mental illness. It is critical to consider the factors that contribute to suicidal behaviour rather than the complex interaction of numerous risk factors such as prior suicide attempts, the presence of one or more mental health conditions, hazardous drug use, hopelessness, and psychosocial stressors.

#### **Suicide's status in the aftermath of decriminalisation:**

Suicidal individuals with mental illnesses require meticulous assessment and management, not detention in jail, where their mental illness is likely to deteriorate. They should have access to counselling services, such as therapy centres and counselling hotlines. Individuals who attempt

suicide due to physical disabilities, diseases, or decrepit old age physical condition require nursing homes, not jails, to deter future attempts.

**Section 115 of the Mental Health Act of 2017 and a suicide attempt [7]:** It is the responsibility of the psychiatric team to educate the patient and caregivers about Section 115 of the Mental Health Act of 2017. Police should be involved in determining whether suicide was assisted, as well as in any subsequent legal procedures that may be required. When an individual who has attempted suicide seeks care at a general hospital but continues to suffer from severe stress or mental illness, the general hospital may initiate emergency psychiatric care for up to 72 hours or until the individual is assessed at a mental health establishment, as provided in Section 94 of the MHCA 2017. Once the same individual has been medically/surgically stabilised, the same Section 94 of the MHCA 2017 permits the individual's transfer and relocation to a licenced mental health establishment. Individuals who have made non-fatal suicide attempts or non-suicidal self-injuries and are thus admitted to a mental health facility must notify the appropriate mental health review board pursuant to Section 89 of the MHCA 2017.

Apart from the legal requirements, anyone attempting suicide, committing non-suicidal self-injury, or committing suicide on the premises of a general hospital or mental health establishment while being treated for the current incident or while being admitted or treated for any medical or mental illness should notify the mental health review board, which may then conduct an extensive investigation. In such instances, the mental health review board may be tasked with prescribing the necessary procedures to prevent recurrence of similar events following a thorough investigation.

Discharge planning should begin immediately after the likelihood of nonfatal suicide attempts or nonsuicidal self-injury is determined to be low. A 24-hour support line must be provided, as must the individual's responsibilities for adhering to the care and contingency plans. Recurrence is estimated to occur at a rate of approximately 10%, and subsequent management regimens should strive to avoid this.

#### **Is it true that decriminalising suicide leads to an increase in suicide attempts?**

At the moment, there is scant evidence that decriminalisation increases suicide rates. Suicide rates, on the other hand, continued to decline following decriminalisation. Decriminalisation may result in an increase in



suicide once the fear of legal repercussions for suicide is removed. This could be one explanation for the increase in the average 5-year official suicide rate in seven countries (Canada, England & Wales, Finland, Hong Kong, Ireland, New Zealand, and Sweden) following suicide decriminalisation, although the reasons for the increase remain unknown. [8] In Canada and New Zealand, two additional 20-year linear time series analyses found no increase in suicide rates following decriminalisation. When suicide was decriminalised in Ireland in 1993, suicide deaths did not increase significantly. [9]

While awareness of section 309 is not universal in India, a sizable proportion of the population is aware of its existence but is unconvinced to attempt suicide. According to a study of 200 attempted suicides in an emergency department of a general hospital, 46.2 percent of males and 26.6 percent of females were aware of current laws prior to the attempt. [10] As the preceding data demonstrate, decriminalising suicide attempts has not been shown to increase suicide rates in general. However, this is insufficient to prevent or significantly reduce suicides.

Even in the absence of Section 309, the Mental Health Act currently contains provisions that facilitate access to mental health treatment for those in need. Law enforcement officers and frontline personnel should be permitted to refer individuals in need of appropriate treatment under these statutes. Additionally, investing in the nation's mental health and developing a National Suicide Prevention Strategy would make a significant difference in the prevention of suicide. Equipping first responders to provide crisis intervention, establishing mobile crisis intervention programmes throughout the community to reach out to individuals experiencing an urgent crisis, and establishing a consistent help-seeking mechanism to connect individuals identified by crisis intervention teams with qualified mental health professionals at designated centres are all examples.

**Resolving unresolved issues:** Only a few state governments argued that section 309 was effective at convicting drug traffickers and suicide bombers. This notion is also absurd, given the existence of separate legislation addressing these offenders, such as the Narcotic Drugs and Psychotropic Substances Act 1985 and the Unlawful Activities (Prevention) Act 1967. Additionally, other sections of the IPC, such as Criminal Conspiracy, War Against the State (waging, attempting, or abetting),

Murder, Attempt to Murder, and others, are invoked concurrently in cases involving terrorist attacks. Another argument against decriminalising suicide attempts was that it would make it more difficult for authorities to deal with individuals who engage in hunger strikes or fasts to death. This type of agitation is frequently expressed by protestors attempting to persuade the government to accept their legitimate requests. Whether the individual truly desired suicide or not is irrelevant, as the argument that the hunger strike's ultimate goal is death demonstrates how effective section 309 is.

Unless otherwise demonstrated, the MHCA believes that the individual attempting suicide is experiencing significant stress. The central government will provide care and rehabilitation to the survivor to avert future suicide attempts. What if no evidence of extreme stress exists? Because the enactment is silent on what must be done unless proven otherwise, the issue must be resolved through rational reasoning. Generally, a person commits suicide in order to avert disasters in his or her life, which appears to be evidence of stress. However, there may be instances where a person commits/attempts suicide for ludicrous reasons, such as near-death experiences or attempting to convince others to accept their love. In this situation, the individual is not stressed. Section 309 is fortunate in that it has not been repealed to date. If it is determined that an individual attempted suicide while not experiencing significant stress, Section 309 may be invoked to address the issue. The individual shall be charged with attempted suicide and sentenced in accordance with that section's provisions. To address the lacuna without violating section 115 of the 2017 Act, section 309 of the IPC is hereby made applicable.

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