

**DE JURE NEXUS LAW JOURNAL**

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**AN ANALYSIS ON THE CONSTITUTIONAL VALIDITY OF SECTION  
309 OF THE INDIAN PENAL CODE, 1860**

**1. MEANING**

Section 309 of the Indian Penal Code, 1860 provides provisions for “Attempt to Suicide” wherein if any person tries to commit suicide and does any act towards the commission of suicide will be prosecuted and imprisoned for a period which may extend to one year. The person may be subjected to pay a fine only, but he may be subjected to imprisonment as well as fine. The origin of this law can be traced back in the British era, where the government decided that an attempt to kill oneself will be considered a crime against the state and shall be punished accordingly. Since the 19<sup>th</sup> century, this law is still in force in our country. According to National Crime Records Bureau (NCRB),<sup>1</sup> a total of 1,39,123 lives have been lost by suicide in 2019 with an average of 381 lives per day. Family problems, marriage related problems, peer pressure, societal pressure etc. are some of the most common motivations which forces an individual to take his/her own life.

Therefore, a lot of dissent has arisen for the constitutional legality of Section 309 of IPC. A lot of criticisms have been raised as to why this law would punish a person who has been mentally suffering from pain or agony that he was going through and wanted to end his life to be relieved of that pain. If the attempt to end his life fails, instead of providing any rehabilitation, the state would further deprive him of his very existence in life by imprisoning him with other inmates, who have been sentenced for much serious crimes, thereby violating the Right to Equality (Article 14) and the Right to Protection of Life and

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<sup>1</sup> Accidental Deaths & Suicides in India 2019 by National Crime Records Bureau available at: [https://ncrb.gov.in/sites/default/files/ADSI\\_2019\\_FULL%20REPORT\\_updated.pdf](https://ncrb.gov.in/sites/default/files/ADSI_2019_FULL%20REPORT_updated.pdf)

Personal Liberty (Article 21).

## 2. CONSTITUTIONAL VALIDITY

### a) LAW COMMISSION REPORTS

- In the **42<sup>nd</sup> Law Commission Report**,<sup>2</sup> in 1971, the law commission concluded that Section 309 of IPC is harsh and unjustifiable, and it should be repealed by the government. They also observed the writings of an English writer wherein he said that punishment for committing suicide is a hideous way to inflict pain on a person who is already disturbed with his/her life. The commission's recommendations were considered and placed by the government in the Indian Penal Code (Amendment) Bill, 1972. However, the bill lapsed after Lok Sabha was dissolved in 1979.
- In the **156<sup>th</sup> Law Commission Report**,<sup>3</sup> 1997, the law commission took a U-turn by affirming the legality of Section 309 in the statute books. The report highlighted the benefits of the sustenance of Section 309 which helps in protecting against grave offences such as narcotic drug-trafficking offences, terrorism, or the phenomenon of human bombs, etc. If a drug trafficker tries to consume a cyanide pill to dissipate some valuable information, he has with him or if a person tries to blow up himself with a human bomb and fails to execute the plan, the culprit must be tried under Section 309 and a proper investigation needs to carry out to prove the offence. Therefore, the commission recommended the government that Section 309 should not be omitted and should continue as a criminal offence in IPC.
- In the **210<sup>th</sup> Law Commission Report**,<sup>4</sup> in 2008, the commission recommended that the government should omit Section 309 because the law is unconstitutional. It observed that Section 309 is cruel and an inhumane act which punishes a distressed person just because he failed to end his life. Attempt to suicide should be dealt with the requisite treatment instead of punishing the person which yields nothing but adding more agony and depression into the person's life. The Law commission urged the government that Section 309 should not be a punishable offence and should be completely removed from the IPC, irrespective of whether it is constitutional or

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<sup>2</sup> 42<sup>nd</sup> Law Commission Report by the Law Commission of India available at: <https://lawcommissionofindia.nic.in/1-50/Report42.pdf>

<sup>3</sup> 156<sup>th</sup> Law Commission Report by the Law Commission of India available at: <https://lawcommissionofindia.nic.in/101-169/Report156Vol1.pdf>

<sup>4</sup> 210<sup>th</sup> Law Commission Report by the Law Commission of India available at: <https://lawcommissionofindia.nic.in/reports/report210.pdf>

unconstitutional.

## b) JUDICIAL REVIEW

Since it is a controversial law, there is no doubt that the Supreme Court and High Courts have tried to give their locus on the constitutional validity of this law.

The 2 most important Articles that courts always used while interpreting this law is Article 14 and Article 21 of the Constitution.

- In *State v Sanjay Kumar Bhatia*,<sup>5</sup> the Delhi High Court was reviewing a case in which a man was acquitted after being booked under Section 309 of IPC. Not only the court had refused to interfere in the decision of a trial a court acquitting the respondent but also criticized the existence of Section 309 by calling it an anachronism of the society. Instead of sending the victim to a psychiatric clinic, he is sent to mingle with criminals thereby casting a shadow into a future which the society has already predicted for him. Although the court believed that Section 309 should not be in the statute books, the question of its constitutional validity was not taken into consideration.
- In *Chenna Jagadeshwar v State of Andhra Pradesh*,<sup>6</sup> the Andhra Pradesh High Court had considered the constitutional validity of Section 309 and had come to the conclusion that it does not violate Section 19 and 21 of the Constitution. The Court observed that this law should not be used on a sick person as there are provisions under the Probation of Offenders Act, 1958 which enables the court to provide psychiatric care to the accused. The court reaffirmed that it has sufficient powers to see that unwarranted harsh treatment or prejudice is not meted out to those who need care and attention. But declaring Section 309 unconstitutional would weaken the foothold of Section 306 (Abetment of Suicide) of IPC since people who could actively be part in abetting a suicide would walk free from being held accountable.
- In *Maruti Shripati Dubal v State of Maharashtra*,<sup>7</sup> the Bombay High Court held that imposing a punishment on suicide is not in consonance with the Constitution as both Article 14 and 21 are being violated. The Court came to such a decision with an affirmative and negative analysis. It also observed that all the fundamental rights mentioned in Part III of the Constitution have both positive and negative aspects. For

<sup>5</sup> State v Sanjay Kumar Bhatia, 1985 SCC OnLine Del 134

<sup>6</sup> 1987 SCC OnLine AP 263

<sup>7</sup> Maruti Shripati Dubal v State of Maharashtra, (1986) 88 BOMLR 589

e.g., people have the freedom of speech and expression as well as have the freedom not to speak and remain silent. People have freedom to form associations and movements and have the right to not join any association and or to move anywhere. Similarly, in the same paradigm, the “Right to Live” which is included in the constitution also includes Right not to Live i.e. “Right to Die”.

- In *P. Rathinam v Union of India*,<sup>8</sup> the Supreme Court agreed Bombay and Delhi High Court’s decision and refused to accept Andhra Pradesh High Court’s decision by observing that Section 309 is violative of Article 14 and Article 21 because the Right to Live does include the Right to Die. It observed that suicide is a mental health problem and should not relate to a criminal instinct. The direct consequence for an attempt to suicide should be by providing counseling of a psychiatrist and not jailing the person.
- However, in *Gian Kaur v State of Punjab*,<sup>9</sup> the Supreme Court overruled the judgement of *P. Rathinam v Union of India*, by reviving Section 309 of IPC and holding that Right to Die cannot be interpreted in Article 21 and thus Section 309 is not violative of Article 21 of the Constitution. The court observed that the Right to Life, no doubt, is part of Article 21 but the concept of suicide is inconsistent with this Article and hence Right to Die is not included in Article 21.
- After 15 years in the case of *Aruna Shanbaug v Union of India*,<sup>10</sup> while legalizing the concept of passive euthanasia the Supreme Court urged the parliament to repeal Section 309 from the Penal Code as it believed that a person who attempts suicide due to emotional reasons needs help rather than punishment.

### c) OTHER REPORTS

- In an article “*Attempt at Suicide- A Crime or A Cry*” by Justice Jahagirdar,<sup>11</sup> if a man does not want to live in the real world and wants to get deliverance from all the pressures of his life, he tries to end his life. If he gets successful in the act, it would be regarded as deliverance but failure in ending his life would be termed as an offence by the society. Therefore, it makes no sense to punish a person who was trying to rescue himself from all the punishments of this convoluted society. Many European

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<sup>8</sup> P. Rathinam v Union of India, 1994 AIR 1844

<sup>9</sup> Gian Kaur v State of Punjab, 1996 AIR 946

<sup>10</sup> Aruna Shanbaug v Union of India, (2011) 4 SCC 454

<sup>11</sup> 210<sup>th</sup> Law Commission Report by the Law Commission of India available at: <https://lawcommissionofindia.nic.in/reports/report210.pdf>

countries such as France and England have already abolished this offense. Even US and USSR, in the later half of 20<sup>th</sup> century, had abolished the law. In India, Section 309 is not only an obnoxious and an irrational law, but it also prevents people from seeking medical care for the fear of being punished. By no means, removal of Section 309 would encourage people to attempt to suicide. It is essential to help the helpless not punish the helpless.

- International Association for Suicide Prevention, France has sent a letter on 9<sup>th</sup> October 2007 to the Ministry of Law and Justice of India to decriminalize attempt to suicide. It opposed the incoherent logic that removing attempt to suicide as a criminal offense would lead to increase in the number of suicides in the country. However, there is no proof which proves the same. Singapore criminalizes attempted suicide, yet the number of suicides were increasing in the country. Therefore, many countries have omitted attempted suicide as crime because people, who are facing an arduous phase of their lives, should be given the requisite help from experts from the medical field instead of throwing them into prisons and making the situation worse.
- Sneha Foundation India, Chennai have opined that suicide is a “cry for help” and a person who tries to end his life needs compassion and emotional support. It would be a lot easier if Section 309 is decriminalized and the apprehension for punishment for attempted suicide is removed. A pragmatic outcome can be witnessed when Sri Lanka had an increase in the number of suicides since attempted suicide was a crime but after its repeal, there was a trend in reduction of suicides.

### **3. THE MENTAL HEALTHCARE ACT, 2017**

After a lot of discourse and appeals by the people as well as the judiciary for decades, the Government of India finally passed the Mental Healthcare Act, 2017 introducing major changes for the Rights of Persons with Mental Illness.

Section 115 of this Act says that if any person tries to commit suicide would be “presumed” to be under “Severe Stress” and shall not be punished according to the provisions mentioned under Section 309 of IPC. It further says that it shall be the duty of the Government to provide care, treatment and rehabilitation to the distressed person who tried to commit suicide. It is a welcoming change made by the government but there are a lot of questions still unanswered. The meaning of “Severe Stress” is not defined anywhere under the Act nor it was mentioned in the original bill and therefore the meaning of such a phrase

is left upto to the courts to interpret. With the enactment of this law, there is a lot of misconception about Section 115 of this Act. It is to be believed that Section 115 of the Act repeals and removes Section 309 from the IPC which is not the case. It has only filtered out Section 309 of IPC by removing all those cases of attempt to commit suicide wherein the person was mentally disturbed and had no intention to commit any sort of crime. The status quo Section 309 of IPC is that if any person who attempts to commit suicide which dangers the public at large or in any extraordinary situation wherein the sovereignty of the country is at stake, in such cases enforcement of Section 309 of IPC would be valid.

#### **4. SHOULD SECTION 309 OF IPC BE COMPLETELY DECRIMINALIZED?**

After a lot of discussion and scrutiny over Section 309, it is safe to say that the validity of this Section is now constitutional. After the Mental Healthcare Act 2017, the soul basis on which the many law commission reports and courts were fighting over the various discrepancies was now removed by Section 115 of this Act. What is left of Section 309 is something we have to analyze. In an interview with a veteran police officer, he emphasized for the continuation of Section 309 for extraordinary cases where the person does not intend to commit suicide but is threatening to kill himself as a way to blackmail authorities in order to force them to fulfill their desires. (e.g., A person shows up in any government office and threatens to kill himself with a weapon if his political demands are not met.) Similarly, extraordinary situations also include those terrorists who engage themselves as suicide bombers and fail to blow up themselves and are caught red handed on time or those terrorists who consume cyanide pills to wipe out intel or an evidence. A similar view was also given by the Law Commission in its 156<sup>th</sup> report. And therefore, at a particular level there is a need of Section 309 as a criminal offence to protect the sovereignty and integrity of this nation.

#### **5. CONCLUSION**

A much-needed reform has been taken place regarding this law and therefore, it can be safe to say that this law is not a threat to a person who is in need of help. But the road does not end here. According to a survey, the most common methods of committing a suicide were by ingestion of pesticides (50%), drug overdose (35%), hanging (10%) and use of sharp objects, drowning, self-immolation and falling from a height (5%). We have to build a community that is helpful to each other, a community where people can understand each other, a community where people can reach out to each other and find a panacea each

other's predicaments because the issue of mental health is one of the major health problems which affects a person's overall health in the 21<sup>st</sup> century and the only cure for this illness is to make sure that requisite mental health resources are available for the troubled individual.



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