
CRIMINALISING A TRAGEDY: A CRITICAL ANALYSIS OF SECTION 309 OF THE IPC AND ITS CURRENT STATUS

Piyush Senapati, National Law University, Jodhpur

ABSTRACT

Suicide has always been a buzzword in contemporary times- whether in the context of the recent spike in suicide rates due to the covid pandemic, farmer's suicides or high-profile cases in the media. In this backdrop of a much sensationalised and tainted word, it becomes imperative for us as legal students to direct the conversation to a more rational approach and critically examine the position of Indian laws on this issue. This paper attempts to undertake a critical analysis of section 309 of the IPC which penalises the attempt to suicide with a special focus on its current status. The first part of this paper deals with the rationale behind suicide criminalisation laws like section 309 with a special emphasis on the theological background of the same. The next part presents an analysis of the case laws that delved into the constitutionality of this section. The subsequent parts deal with the flaws in the very idea of criminalisation of suicide, the current standing of section 309 of the IPC after the enactment of the Mental healthcare Act, 2017. The shortcomings of the provision in the Mental Healthcare Act of 2017 dealing with attempted suicides are also explored in the last part of the paper along with recommendations to fix the lacunae in the same and to bolster India's suicides prevention strategies.

INTRODUCTION

Suicide, or the deliberate termination of one's existence¹, is a word that evokes a variety of emotions- from sympathy to disappointment to even disgust. The reasons behind all these responses maybe rooted in religious beliefs or a lack of understanding of mental health issues. Regardless of one's views on the morality of suicide, one thing is unanimously agreed- it is a grave tragedy indeed. But the question that society has been confronted with for a while now is whether attempting to commit this tragedy should invite penal punishment. Section 309 of the Indian Penal Code² (hereinafter "IPC") answers this question in the affirmative-as per this section, whoever attempts to commit suicide and does any act towards the commission of such offence, shall he punished with simple imprisonment for a term which may extend to one year or with a fine or both. This offense is bailable, cognisable and non-compoundable.

Throughout the existence of this section of the IPC, it has invited criticism, doubts, and varied judicial opinions. Questions were raised about the morality and rationality of criminalising attempted suicide. From a pragmatic point of view, it came to be realised that such laws failed to serve their supposed purpose of deterring suicides and actually exacerbated the problem. From a humane perspective, it was felt necessary to place those who commit this supposed crime in the centre of the conversation- are they to be regarded as offenders who must be penalized, or troubled victims who need urgent psychological and community support rather than languishing in jails? Furthermore, can and should the concept of bodily autonomy be extended to cover self-harm and suicide, and should the interventions to prevent these be legal or purely psycho-social in nature?

With increasing breakthroughs in mental health knowledge and emergence of empirical research demonstrating the harms of criminalising suicide, a global trend emerged which saw countries around the world striking off such laws from their lawbooks. Currently, only 20 of the world's 193 nation states criminalise suicide³, while the original number was quite higher. While India being late to join the trend was certainly disappointing, progress did come in the form of the Mental Health act of 2017, section 115⁴ of which decriminalised suicide by offering a presumption of severe stress in all cases. However, what was more disappointing is that there still remained grave flaws in this section which can potentially hamper India's suicide

¹ HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1602 ST. PAUL MINN (4TH ed. 1968).

² Indian Penal Code, 1860, §309, No. 45 of 1860 (India).

³ UNITED FOR GLOBAL MENTAL HEALTH, *DECRIMINALISING SUICIDE: SAVING LIVES, REDUCING STIGMA*, (2021).

⁴ Mental Healthcare Act, §115, No 10, Acts of parliament, 2017 (India).

prevention strategy and fail in protecting all victims of a tragedy like attempted suicide from criminal-like treatment. Currently, it remains to be seen whether the Indian government can rise up to the challenge and address the flaws in its approach dealing with attempted suicide.

THE RATIONALE BEHIND THE CRIMINALISATION OF SUICIDE

Before we dive into the particulars of a law like section 309 of the IPC, it becomes important to examine why such laws exist in the first place.

Man's understanding of God and His commandments have shaped moral codes for many a millennium and the same has thus influenced or even shaped legal systems throughout jurisdictions. A distaste for the act of ending one's own life is present in most belief systems. As per Abrahamic religions (Judaism, Christianity and Islam), God is the sole creator of life⁵ and since He alone has the power to determine someone's death and thus suicide would be a transgression. Therefore, the Christian saint Thomas Aquinas had declared suicide to be a mortal sin⁶ in the 11th century. In Islam, both the Quran and Hadith prohibit suicide⁷. In Dharmic religions like Hinduism and Jainism too suicide is regarded as spiritually unacceptable and as a form of *ahimsa*.⁸

Religion has always had a profound influence on law and thus the religious distaste for suicide manifested itself in the penal laws of many countries and the Indian laws are no exception. Thus, India's penal code of 1860, drafted by the first Law Commission chaired by Thomas Macaulay and heavily influenced by Victorian Christian morality, also had a provision that reflected this widespread distaste for the attempt to suicide- section 309.

While religion is a pre-dominant factor in the criminalisation of the attempt to suicide, it is far from being the only one. The attempt to suicide was made punishable due to other reasons such as the belief that only the state had the power to take away a person's life, and also that such penal punishment for the act could deter people from committing suicide.

⁵ John F. Frame, God the Creator, The Gospel Coalition (July 10, 2022 at 4.00 pm), <https://www.thegospelcoalition.org/essay/god-the-creator/>

⁶ THOMAS AQUINAS, *SUMMA THEOLOGIAE*, 2A 2Ae, Question 64, Article 5, c. 1265 -1273.

⁷ Pouradeli S, Najafipour R, Doost Mohammadi F, Hosseini F, Rezaeian M, *A Review of Suicide in the Mirror of Islamic Hadiths and Traditions*, 3 (1) JSP 17-26, (2021).

⁸ Jayaram V, About Suicides in Hinduism, Hinduwebsite.com (July 10, 2022 at 5.00 pm), https://www.hinduwebsite.com/hinduism/h_suicide.asp .

JUDICIAL INTERPRETATION OF SECTION 309

Section 309 of the IPC found itself in the middle of the heated debate concerning the question whether the right to life included the right to die and the issue of bodily autonomy. Marred by controversy, this section of the IPC has been tested on the touchstone of the Constitution multiple times. The Evolution of cases dealing with its constitutionality is as follows-

The first case in which in which this section was deliberated upon was the case **State v. Sanjay Kumar Bhatia**⁹ by the Division Bench of the Delhi High Court. Sachar J, as he was then, opined in the favour of the repeal of this section, terming it “an anachronism unworthy of a humane society like ours”. He reasoned that a person who attempts suicide needs medical and psychological attention and should not be sent to jails to mingle with criminals. He observed that the criminalisation of attempted suicide simply sought to suppress the symptoms of the strains of the modern world and such an approach could only result in failure. Thus, it can be concluded from his observation that suicide as an issue is rooted in the social and psychological domain and thus should be left out of the purview of the penal system.

Subsequently, in the case of **State of Maharashtra v. Maruti Sripati Dubal**¹⁰, section 309 of the IPC was held unconstitutional. The petitioner sought to quash the proceedings under section 309 on the ground that it was violated of Articles 19 and 21 of the constitution. It was argued that the right to life as guaranteed by article 21 also implied the right to end one’s life, based on the notion that the state could not compel a person to live when it couldn’t provide him the material sustenance for the same. The court in that case held that fundamental rights have both positive and negative connotations- the right to freedom of speech also implies the right not to speak, and the right to freedom of movement would also include the right to not move anywhere. Since all the fundamental rights have to be read together, the court reasoned that the positive right guaranteed by Article 21 i.e. the right to life would also carry a negative implication- the right not to live¹¹. Therefore, the Bombay High Court held that right to die is included under 'right to life' enshrined under Article 21 of the constitution and hence section 309 is unconstitutional for violating Article 21. However, the High Court’s decision in Maruti Sripati Dubal’s case to include right to die within right to life was not absolute to be exercised under all circumstances, rather it was applicable only under certain situations, entailing that in

⁹ State v. Sanjay Kumar Bhatia, (1986) 10 DRJ 31 (1985).

¹⁰ State of Maharashtra v. Maruti Sripati Dubal (1986) 88 BOMLR 589.

¹¹ Hardik Baid, Case Comment on State of Maharashtra v. Maruti Sripati Dubal, Indian legal solutions (July 10, 2022 at 6 pm) <https://indianlegalsolution.com/maruti-shripati-dubai-v-state-of-maharashtra/>

the absence of sufficient reasons, the act would be considered as an offence being punishable under the law¹².

However, another High Court subsequently adopted a divergent view regarding the constitutionality of this section. The Andhra Pradesh High Court in the case of **Chenna Jagdeshwar v. State of Andhra Pradesh**¹³ held that it would be difficult to conclude that the right to life guaranteed by our constitution also includes the right to die. The court said that if section 309 is held ultra vires, then no action could be taken against those who threaten to self-immolate or perform hunger strikes on the ground that they have a right to end their lives. The court also observed that not every case under section 309 leads to punishment and the section does not mandate the court to punish attempted suicide, but only lays down the upper limits. Due to many other laws such as the Probation of Offenders Act, any court dealing with cases under this section court has discretion to send the accused to psychiatric care or release him with an admonition. The court also raised concerns about the utility of section 306 of the IPC¹⁴ which criminalises abetment of suicide if section 309 was to be done away with. Thus, based on the following grounds, section 309 was held constitutional. The court's decision in this case reflected a pragmatic consideration of the practical difficulties involved in repealing section 309.

This divergence in the views of the two high courts was finally settled by the decision of the Supreme Court in the case of **P. Rathinam v. Union of India**¹⁵. The court in that case termed suicide a “psychiatric problem and not a manifestation of criminal instinct”. The court held that section 309 was a “cruel and irrational provision” and that the right to life also includes the right not to live a forced life, and that a person does not deserve to be prosecuted simply because he has failed in his attempt. After referring to the medical and moral literature on the subject, the court came to the conclusion that a person cannot be forced enjoy the right to life to his detriment, disadvantage and disliking¹⁶. The court held that an act of suicide cannot be said to be against religion, 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.

¹² Smita Satapathy, Madhubrata Mohanty, *Constitutionality of Attempt to Commit Suicide Unlocking The Controversy*, 20(1) MED-LEGAL UPDATE, 63-66 (2020).

¹³ Chenna Jagdeshwar v. State of Andhra Pradesh (1988) Cr LJ 549.

¹⁴ Indian Penal Code, 1860, §306, No. 45 of 1860 (India).

¹⁵ P. Rathinam v. Union of India (1994) 3 SCC 394.

¹⁶ P. M. Bakshi, *Suicide and Criminal Law*, 36: 4 JILI ,522-524 (1994).

Therefore, the court in this case upheld the Bombay HC's judgement of Maruti Shripati Dubal and struck down section 309 for being *ultra vires* the constitution.

However, the declared unconstitutionality of section 309 caused much hue and cry throughout the country- its decriminalisation was as controversial as the existence of the section. There was a fear that the decision of the court in this case would open a Pandora's box of sorts- The striking down of the said section is based on the presumption of suicide being committed due to psychological distress, yet what about cases where people threaten and attempt suicides as a form of protest against government authorities? What was to be the status of section 306¹⁷ of the IPC, which criminalised abetment to suicide, if section 309 was to be done away with? Should the unnatural termination of life really be permitted, especially considering the number of suicides committed by the young deprived of rational thinking due to petty reasons like failures in examinations or botched up love affairs?

Thus, the declared unconstitutionality of section 309 did not last long- the Supreme Court took a completely different view in the subsequent case of **Gian Kaur v. State of Punjab**¹⁸. The court held that the right to life is guaranteed by article 21, but suicide, being an unnatural termination of life, is incompatible with the concept of right to life. The court found no similarity in the nature of the other rights, such as the right to freedom of speech' etc. to provide a comparable basis to hold that the 'right to life' also includes the 'right to die'. Basically, it reasoned that the decisions which held that not exercising a fundamental right fall within the ambit of that right do not imply that the same is also true for article 21, as was held in the P Rathinam case¹⁹. The court clarified that the right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life and that it cannot be interpreted to mean the right to die an unnatural death curtailing the natural span of life. Thus, the Supreme Court in this case settled the raging debate regarding the constitutionality of section 309 of the IPC once and for all.

THE PRESSING REASONS FOR DECRIMINALISATION OF ATTEMPTED SUICIDE

While the courts upheld the constitutionality of section 309 of the IPC, the debate regarding its

¹⁷ Indian Penal Code, 1860, §306, No. 45 of 1860 (India).

¹⁸ Gian Kaur v. The State Of Punjab, (1996) 2 SCC 648.

¹⁹ P. Rathinam v. Union of India (1994) 3 SCC 394.

utility and necessity raged on. While the court in the Gian Kaur case²⁰ found the section legally sound on the touchstone of article 21, the judgement did not really consider the practical implications of retaining this section. Multiple critics have advanced arguments regarding how the section fails to achieve what it was intended to do and creates many negative ramifications, raising a doubt over the practical utility of retaining such a section in the rule book. Some of these contentions are examined as follows-

- 1. The criminalisation of attempted suicide fails to act as a deterrent-** Supporters of section 309 and other such laws throughout the globe contend that such laws act as a deterrent against suicide, helping in the preservation of life. However, empirical research casts major doubt on the supposed deterrent effect of criminalisation of attempted suicide. In a cross-sectional ecological study of 171 countries in the world, it was found that laws penalising suicide were associated with higher national suicide rates in general and even more so in the female population in the low HDI, non-Muslim countries²¹. While it is commonly feared that the removal of this “deterrent” would increase suicide rates, the truth is the opposite- as per The WHO Global report 2014, no data or case-reports indicate that decriminalization increases suicides; in fact, suicide rates tend to decline in countries after decriminalization²². There are multiple reasons why such a section fails to act as an effective deterrent- in a country like India, where most people do not even know their basic rights and duties, it is irrational to expect the general populace to be aware of some obscure section of the IPC. This is demonstrated by the fact that in a study of study of attempted suicides in a General Hospital Emergency facility revealing that only 46.2% males and 26.6% females were aware of this law²³. Additionally, it is obvious that a person who tries suicide because of his adverse mental state will not investigate the fact whether or not he would be disciplined for his actions. Also, in most cases those attempting suicide are under the impression that they will be successful in their attempts and escape liability under this section. Thus, the threat of prosecution and punishment does not dissuade a person from taking this grave step.

²⁰ Gian Kaur v. The State Of Punjab, (1996) 2 SCC 648.

²¹ Wu KC, Cai Z, Chang Q, *et al* *Criminalisation of suicide and suicide rates: an ecological study of 171 countries in the world* 12 BMJ OPEN (2022).

²² Mishara BL, Weisstub DN, *The legal status of suicide: a global review*, 44 INT. J. LAW PSYCHIATRY, 54-74 (2016).

²³ Ranjan R, Kumar S, Pattanayak RD, Dhawan A, Sagar R. *(De-) criminalization of attempted suicide in India: A review*, 23(1) IND PSYCHIATRY J, 4-9 (2014).

2. Criminalisation of suicide contributes to shame and stigma regarding suicides and mental health issues-

It is often said that law should not become a vehicle for moral condemnation of certain behaviours regarded as unacceptable. Laws criminalising suicide have the negative affect of publicly shaming a person who is obviously in need of help and airing out their personal business to the world, adding to their trauma and suffering. This shaming inhibits people bereaved by attempted suicide from getting the much-needed help and support, and they perpetuate practices where, rather than receiving mental health care and treatment, people at risk of suicide are left to hide their difficulties, thus increasing the risk that they will die by suicide²⁴. The problem is worse for stigmatized minority communities like different caste groups, queer people²⁵ and other groups like women and unemployed people who are at a greater risk of suicide²⁶ and thus would have to bear the double brunt of shame in case of a failed suicide attempt.

Therefore, it was argued the decriminalisation of section 309 would lessen stigma regarding suicide and thus those vulnerable to the same would be able to freely communicate suicidal thoughts and receive psychological help.

3. Imprisonment after a suicide attempt would have adverse mental health consequences-

It is barbaric to send a person to prison after a suicide attempt at a time when the person would be in a vulnerable state and needs professional help and social/community support. One-third of the suicide attempters within years eventually repeat the tendency²⁷ and thus they need mental health assistance with immediate effect, not prison time. Many suicide attempts occur during imprisonment²⁸ since imprisonment increases suicide risk because of harsh conditions and lack of, or inadequate, psychiatric help. Oftentimes, jail authorities do not have the requisite

²⁴ International Association for Suicide Prevention, *IASP Policy position on the decriminalization of attempted suicide Background Document 3* (2019) <https://www.iasp.info/wp-content/uploads/IASP-Decriminalisation-Background-Document-GA.pdf>

²⁵ Green AE, Price MN, Dorison SH. *Cumulative minority stress and suicide risk among LGBTQ youth*. 69(1-2), AM J COMMUNITY PSYCHOL. 157-168 (2022).

²⁶ Anatol-Fiete Näher, Christine Rummel-Kluge, Ulrich Hegerl, *Associations of Suicide Rates With Socioeconomic Status and Social Isolation: Findings From Longitudinal Register and Census Data* 10 FRONT. PSYCHIATRY 898 (2020).

²⁷ PIRKIS J, BEAUTRAIS A, DURKEE T. *SUICIDE ATTEMPTS IN NEW ZEALAND AND AUSTRALIA, OXFORD TEXTBOOK OF SUICIDOLOGY AND SUICIDE PREVENTION: A GLOBAL PERSPECTIVE*. 127–31 Wasserman D, Wasserman C, Oxford: Oxford University Press; 2009.

²⁸ Mensah A, *Criminal prosecution of suicide attempt survivors in Ghana* 57(12), INT. J. OFFENDER THER. COMP. CRIMINOL. 1477- 1497 (2013)

medical or psychological know-how to deal with the same. Additionally, after a suicide attempt any family would be in turmoil and dealing with the police procedures and trials would add to their woes. Thus, treating a vulnerable suicide victim like a common criminal is contrary to both common sense and humanity.

4. Decriminalisation of suicide aids in suicide intervention and prevention- Suicide remains criminalized in many developing countries and this is a major hindrance to collecting data and planning appropriate interventions²⁹. Treating attempted suicide as criminal behavior leads to an underestimation of the ‘true’ extent of suicidal behavior and its (clinical, psychosocial and other) characteristics due to concealment of such behavior by attempters, family members and relatives, medico-legal authorities etc.³⁰ For a proper public health response to the problem of suicide, authorities need accurate information to understand who is at risk and laws like section 309 contribute towards suppressing that information. Therefore, decriminalization improves measurement of the extent and characteristics of suicidal behavior, which in turn provides for effective suicide prevention strategies and initiatives³¹.

5. Section 309 of the IPC is behind global standards-

Attempt to suicide is currently a crime in only 20 out of the 193 countries of the world³². Of recent years, World Health Organization (WHO) has identified fifty-nine countries worldwide that decriminalized attempts to commit suicide³³, reflecting the global trend of increased understanding of suicide as a psycho-social problem and not a criminal act. Even the British who put section 309 in the Indian penal laws in the first place decriminalized attempted suicide through the Suicide Act of 1961³⁴. Global organizations like IASP have urged the Indian government to do away with this law³⁵. The Law

²⁹ VIJAYAKUMAR L, PHILLIPS M, *SUICIDE PREVENTION IN LOW- AND MIDDLE-INCOME COUNTRIES*, THE INTERNATIONAL HANDBOOK OF SUICIDE PREVENTION: SECOND EDITION 505-523 (2ND EDITION 2016)

³⁰ International Association for Suicide Prevention, *IASP Policy position on the decriminalization of attempted suicide Background Document 3* (2019) <https://www.iasp.info/wp-content/uploads/IASP-Decriminalisation-Background-Document-GA.pdf>

³¹ International Association for Suicide Prevention, *IASP Policy position on the decriminalization of attempted suicide Background Document 3* (2019) <https://www.iasp.info/wp-content/uploads/IASP-Decriminalisation-Background-Document-GA.pdf>

³² United for Global Mental Health, *Suicide Decriminalisation*, <https://unitedgmh.org/suicide-decriminalisation> (last visited 10 July 2022).

³³ WORLD HEALTH ORGANIZATION, *PREVENTING SUICIDE: A GLOBAL IMPERATIVE*, 50-51 (2014).

³⁴ Suicide Act 1961, 9 & 10 Eliz 2. c.60, § 1.

³⁵ LAW COMMISSION OF INDIA, 210TH REPORT, *HUMANIZATION AND DECRIMINALIZATION OF ATTEMPT TO SUICIDE*, 33 (2008).

commission in its 210th report took a note of this global trend towards decriminalization³⁶, observing how countries like Singapore that retained such laws faced increasing suicide rates, while those like Sri Lanka which did away with such laws found success in reducing suicide rates. This sentiment of section 309 being an archaic law was echoed by J. Sachar in the case of Sanjay Kumar Bhatia³⁷, wherein he termed the section “an anachronism unworthy of a humane society like ours”. Thus, there was a real fear that this section 309 of the IPC made Indian suicide prevention strategy fall behind global standards not in tandem with the progressive worldview regarding mental health.

THE PATH TOWARDS DECRIMINALIZATION OF ATTEMPTED SUICIDE- AN INCOMPLETE JOURNEY.

The path towards decriminalisation of attempted suicide in India at the executive level started with the recommendation of the Law Commission of India recommending the same in its 42nd report, terming section 309 “harsh and unjustifiable”³⁸. The government took note of this and tabled the Indian Penal Code (Amendment) Bill, 1972³⁹ to abolish section 309. However, the bill was pending in the sixth Lok Sabha when it dissolved in 1979, and thus it lapsed. In the backdrop of the Gian Kaur case⁴⁰, The Law Commission in its 156th report recommended the retention of this section⁴¹. However, the Law Commission subsequently diverged in its opinion and supported the deletion of this section in its 210th report⁴². Taking note of the changed socio-legal scenario and shifting global standards, the government felt that it was necessary to decriminalise attempted suicide.

After decades of indecisiveness on this issue, progress came in the form of section 115 of the Mental Healthcare Act, 2017⁴³ (Hereinafter “MHA”) which provides that a person attempting suicide shall be presumed to be under severe stress unless proved otherwise and will not be tried and punished under the IPC. Clause 2 of the section provides that the appropriate government

³⁶ *Id.* at 33-34

³⁷ State v. Sanjay Kumar Bhatia, (1986) 10 DRJ 31 (1985).

³⁸ LAW COMMISSION OF INDIA, 42ND REPORT, OFFENSES AFFECTING THE HUMAN BODY, 243-244, (1971).

³⁹ Indian Penal Code (Amendment) Bill, 1972, Bill No. 31 of 1972, § 126, (December 11, 1972).

⁴⁰ Gian Kaur v. The State Of Punjab, (1996) 2 SCC 648.

⁴¹ LAW COMMISSION OF INDIA, 156TH REPORT, SUICIDE: ABETMENT AND ATTEMPT, 125-134, (1997).

⁴² LAW COMMISSION OF INDIA, 210TH REPORT, HUMANIZATION AND DECRIMINALIZATION OF ATTEMPTED SUICIDE, 38-39, (2008).

⁴³ Mental Healthcare Act, §115, No 10, Acts of parliament, 2017 (India).

shall have a duty to provide care, treatment and rehabilitation to the person having severe stress and who attempted suicide.

While the decriminalisation of attempted suicide by section 115 of the MHA is a welcome step, there remain practical difficulties in its implementation and ambiguity in its wordings.

Some of the major flaws of this section are as follows:

- 1) **Ambiguity in the wording of the section-** Section 115 of the MHA provides that unless proved otherwise, every person attempting suicide shall be presumed to have been under “severe stress” and thus would not be prosecuted under section 309 of the IPC. However, the Act does not provide any definition of the word “sever stress”. In the absence of such a definition, it is the courts that would have to decide what would constitute “severe stress” based on the material facts of the case and evidence presented before it. However, this is where the major flaw in this section lies⁴⁴- determining whether the person was under “severe stress” could become quite a subjective task in the absence of any clear guidelines or concise definitions, for what the understanding of “severe” may vary from person to person. There exist scientific, psychological methods for measuring stress such as the perceived Stress Scale (PSS), Relative stress scale (RSS), Psychological Stress Measure (PSM)⁴⁵, yet there is zero clarity on which ones are to be followed (or if they are to be followed at all) and what is threshold in the above-mentioned measuring scales beyond which stress can be termed as severe. Due to this ambiguity resulting in subjectivity, there is a real danger that those genuinely under mental stress are deprived off the benefits of this section because they do not pass an arbitrary, unscientific standard of “stress”. Or, there might be too wide an interpretation of this term. Whatever the case maybe, a lack of concise definition is a glaring flaw in this section which could result in injustice being meted out.
- 2) **Flaw in presumption of “severe stress”** - Section 115 of the MHA presumes that those committing suicide are under severe stress and unless proved otherwise, they will not be prosecuted under section 309 of the IPC. Additionally, the Himachal Pradesh High

⁴⁴ Phalguni Garg, Ambiguities in the Mental healthcare Act, Academike, (July 5, 2022 , 9.30 pm) <https://www.lawctopus.com/academike/ambiguities-in-the-mental-healthcare-act/>

⁴⁵ Li Liu et al, A Novel Stress State Assessment Method for College Students Based on EEG, 9 COMPUT. INTELL. NEUROSCI, 1-11, (2022).

Court clarified the meaning of this section in a recent judgement⁴⁶, holding that the person must be suffering from severe stress or mental illness while committing suicide in order for the benefits of section 115 to be available to him.

However, there are various reasons why people commit suicide besides those rooted in psychological stress, it is not necessarily a matter of insanity, irrationality or despair⁴⁷ and they may not be under severe stress while committing the act. For example, certain people wish to live no more as they believe they have attained the fulfilment of their purpose and desire no more, such as the plaintiff in the case of *Thomas master v UOI*⁴⁸. Others take their lives due to religious delusions, for example the Burari deaths in 2019. Since section 309 is still operational, cases of attempted suicide besides those under severe stress would be come within its ambit⁴⁹, as per section 115 of MHA. However, is it really just to prosecute and imprison all those who attempted suicide but were not under severe stress when committing the act? The Court in *Thomas Master* has held that there cannot be a distinction made between persons those commit suicide or attempt to commit suicide impulsively under stress and those who decided to end their life after thought⁵⁰. Common sense and humanity dictate that both these groups of people are equally deserving of professional guidance and support and not the rigours of trial and imprisonment. Thus, this presumption of “severe stress” is a glaring flaw that excludes an entire group of victims.

- 3) This section subjects an already stressed person to the rigours of trial-** The very purpose of section 115 was to save a distressed person from trial and punishment for attempted suicide. However, the presumption of stress saving the victim from prosecution operates only if it isn't proved otherwise. If it is proved that the accused was not under severe stress, he/she will be prosecuted under section 309 of IPC⁵¹. As

⁴⁶ *Pratibha Sharma v State of Himachal Pradesh* 2019 SCC OnLine HP 2619.

⁴⁷ Imre Loefer, *Suicidal thinking*, 333 BMJ 103 (2006).

⁴⁸ *C.A. Thomas Master And Etc. v. Union Of India And Ors* 2000 CriLJ 3729.

⁴⁹ Akshay Shekhawat & Bhaskar Agarwal 2020 'Why Penalization of Attempt to Commit Suicide is still a Valid Law?' The Criminal Law Blog, (July 11, 2022 at 3.15 pm) <https://criminallawstudiesnluj.wordpress.com/2020/07/13/why-penalization-of-attempt-to-commit-suicide-is-still-a-valid-law/>

⁵⁰ *C.A. Thomas Master And Etc. v. Union Of India And Ors* 2000 CriLJ 3729.

⁵¹ Akshay Shekhawat & Bhaskar Agarwal 2020 'Why Penalization of Attempt to Commit Suicide is still a Valid Law?' The Criminal Law Blog, (July 11, 2022 at 3.15 pm)

per decision of the court in *Pratibha Sharma v State of Himachal Pradesh*⁵², if the police intend to register an FIR under section 309 against a person attempting suicide, it has the onus to bring materials that disprove that person was under severe stress. Thus, there is a possibility that the person may have to testify and be questioned before the court, making him revisit all the facts and circumstances of his/her attempted suicide and adding greater stress to his already troubled psyche.

CONCLUSION AND RECOMMENDATIONS

The world, to a great extent has come a long way from viewing suicide as a shameful act to one that has complex psycho-social and economic reasons behind it. While there is still a long way to go in terms of completely de stigmatising and de criminalising attempted suicide in all the countries of the world, the considerable progress fuelled by efforts of activists and organisations cannot be denied. Moreover, the futility of criminalising the attempt to suicide and the counter-productive nature of such laws has come to be realised by the lawmakers in various jurisdictions.

In the Indian scenario, progress came but at a slow place. The decades of the 80's and the 90's saw the judiciary dilly-dallying on the question of the constitutionality of section 309 of the IPC, and then finally holding the section valid in *Gian Kaur's* case. While the judiciary is oftentimes the sole protector of the vulnerable in our polity, in this regard the executive was a step ahead of it, as evidenced by the lapsed Indian Penal Code (Amendment) Bill, 1972 and the Mental healthcare Act of 2017.

While the MHA and particularly section 115 of the Act is a welcome step in the right direction, it would be folly to think that the act is a job well done. Section 115 of the act has serious ambiguity owing to its wording and other flaws that risk putting the effectiveness of this section in serious jeopardy. An exact definition clarifying the scope and quantum of the words "severe stress" is much needed. Additionally, the government must amend the existing law to include within its ambit some of those suicide attempters who are not under severe stress when committing the act. It is also important to specifically exclude those cases of stress-free suicides

<https://criminallawstudiesnluj.wordpress.com/2020/07/13/why-penalization-of-attempt-to-commit-suicide-is-still-a-valid-law/>

⁵² *Pratibha Sharma v State of Himachal Pradesh* 2019 SCC OnLine HP 2619.

that are in the nature of human bombs, as means of political protest, or those attempted after failure to commit an offense from the ambit of this section. The need for clarity of regarding this section has been felt by the judiciary too, as is evident from the Himachal Pradesh High Court's direction to the state chief secretary to frame guidelines⁵³ enabling the police to comply with section 115 of the MHA. Another major problem is that the police are often ignorant of the changes brought about by section 115 of the MHA 2017 and continue to register cases under the section 309⁵⁴. While the charges are usually dropped, due to police ignorance those deserving of immediate treatment and support are deprived of the same. Therefore, it becomes imperative for the government to inculcate awareness in the police forces and other medico-legal authorities regarding this section.

It can only be hoped that the alarming increase in suicide rates associated with the covid pandemic and its after effects⁵⁵ serves as a wakeup call to the authorities to bolster India's suicide prevention strategies and fix the lacunae in the legislation towards the same. Justice Chandrachud's observation in the Common Cause judgement⁵⁶ about the need to decriminalise suicide also gives us hope that the judiciary can redeem itself from the setback of the Gian Kaur⁵⁷ case. Most importantly, there is a dire need to understand that law cannot fix all problems. What needs to be done is the encouragement of inculcation of community support for suicide attempters and victims, a discouragement of sensationalised reporting of suicide cases, and an improvement in access to mental health services for vulnerable groups. Ultimately, there is a dire need for mainstream society to change its attitude towards mental health problems and illnesses and encourage help-seeking behaviour, for that would be the most efficient suicide preventive.

⁵³ Pratibha Sharma v State of Himachal Pradesh 2019 SCC OnLine HP 2619.

⁵⁴ Jibby J Kattakayam, *A job left half done*, The Times of India, (September 13, 2020 7:27 PM) <https://timesofindia.indiatimes.com/blogs/jibber-jabber/a-job-left-half-done/>

⁵⁵ Arya V et al, *Suicide in India during the first year of the COVID-19 pandemic*, 307 J AFFECT DISORD 215–220 (2022)

⁵⁶ Common Cause (A Regd. Society) v. Union Of India (2018) 5 SCC 1

⁵⁷ Gian Kaur v. The State Of Punjab, (1996) 2 SCC 648.