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FROM PUNISHMENT TO PROTECTION THE PROCEDURAL AND SUBSTANTIVE SHIFT IN INDIA'S APPROACH TO ATTEMPTED SUICIDE UNDER THE BHARATIYA NYAYA SANHITA, 2023

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Abstract

The Bharatiya Nagarik Suraksha Sanhita, 2023 introduces a marked departure from the previous criminal procedure regime by omitting the penal provision for attempted suicide that existed under Section 309 of the Indian Penal Code, 1860. This shift signifies a broader transformation in the State's approach—moving away from criminal prosecution toward a framework grounded in care and mental health support. This article examines the legal implications of this omission, particularly in the context of procedural changes that arise from the transition from the Code of Criminal Procedure, 1973 to the BNSS. It contextualises the change within a wider judicial and legislative narrative, drawing on decisions such as *Gian Kaur v. State of Punjab* and *Common Cause v. Union of India*, and explores the interplay with the Mental Healthcare Act, 2017, which presumes mental illness in cases of attempted suicide and bars punitive treatment. The paper argues that the legislative intent behind this reform reflects a constitutional and humanitarian reorientation, and considers whether existing institutional structures are adequately equipped to address the rehabilitative needs of persons who attempt suicide.

Keywords: Attempted Suicide, Section 309 IPC, Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, Mental Healthcare Act 2017, Right to Life, Article 21, Decriminalization.

1. Introduction: A Paradigm Shift from Punishment to Protection

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the colonial-era Indian Penal Code, 1860 (IPC), marks a watershed moment in the evolution of India's criminal justice system. Among its many reforms, one of the most profound is the complete omission of a provision equivalent to Section 309 of the IPC, which criminalized the act of attempting suicide. This legislative act is not merely a technical deletion but the culmination of a decades-long socio-legal churn that has fundamentally reshaped the State's perspective on mental health, individual autonomy, and human dignity. The transition from a punitive framework that prosecuted vulnerable individuals to a protective one that mandates care represents a paradigm shift, moving the discourse on suicide from the confines of a police station to the therapeutic spaces of healthcare institutions.

For over 160 years, Section 309 of the IPC stood as a stark legal anomaly, punishing individuals who, in a state of profound distress, failed in an attempt to end their own lives. This provision

subjected already traumatized individuals to the rigours of the criminal justice system—arrest, investigation, and potential imprisonment—thereby compounding their suffering and creating a formidable barrier to seeking help. The journey towards its repeal has been arduous, navigated through the corridors of Parliament, the chambers of the Supreme Court, and the tireless advocacy of mental health professionals and human rights activists. This path has been paved with landmark judicial pronouncements that have debated the very essence of the right to life under Article 21 of the Constitution, legislative interventions like the Mental Healthcare Act, 2017 (MHCA), which sought to mitigate the harshness of the law, and a growing societal consciousness that views suicide as a public health crisis rather than a moral failing.[1098]

This article posits that while the formal decriminalization of attempted suicide under the BNS and the corresponding procedural reorientation under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) constitute a monumental and necessary humanitarian advancement, the true success of this reform is not guaranteed by legislative fiat alone. Its efficacy is critically contingent upon overcoming deeply entrenched systemic challenges. The new legal framework mandates a shift from punishment to protection, but this can only be realized if it is supported by a robust public mental healthcare infrastructure capable of delivering the promised care and a law enforcement apparatus that has been retrained and reoriented from a punitive to a facilitative role. This analysis will trace the historical and jurisprudential arc of Section 309, dissect the interim measures that bridged the gap, deconstruct the new legal architecture, and critically evaluate the formidable implementation hurdles that lie ahead.[1099]

2. The Punitive Past: Origin, Nature, and Jurisprudence of Section 309 IPC

2.1. Colonial Origins and Rationale

Section 309 of the Indian Penal Code, 1860, was a direct transplant from 19th-century British law, a period when legal thought was heavily influenced by ecclesiastical doctrines that condemned suicide as a grave sin—a *felo de se*, or felony against oneself. The underlying legal rationale was twofold. First, it was rooted in the principle of the "sanctity of life," which held that life was a divine gift that no individual had the right to renounce. Second, it was based on a state-centric view where an individual's life was considered a valuable asset to the State, which, in turn, had a sovereign duty to protect it, even from the individual's own actions. Section 309 stated: "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".

The provision's placement within the IPC was itself telling. It was situated in Chapter XVI, titled "Of Offences Affecting the Human Body," alongside crimes like murder, culpable homicide, and assault—offences invariably committed by one person against another. The inclusion of a self-directed act of harm in this chapter was a conceptual anomaly, treating the distressed individual as both victim and perpetrator. This framework ignored the complex web of factors that drive a person to suicide, such as mental illness, socio-economic distress, or unbearable suffering, and instead applied a blunt instrument of criminal law to a deeply personal and tragic human experience. Ironically, while Britain, the source of the law, decriminalized attempted suicide in 1961, India continued to retain this archaic provision for

[1098] Ahmed, T., et al. (2022). *Understanding India's response to mental health care: a systematic review of the literature and overview of the National Mental Health Programme*. Journal of Global Health Neurology and Psychiatry. Retrieved from https://joghnp.scholasticahq.com/article/36128-understanding-india-s-response-to-mental-health-care-a-

[1099] Article-14. (2023). *Bharatiya Nyaya Sanhita Bill, 2023 & Indian Penal Code, 1860: An Annotated Comparison*. Retrieved from https://article-14.com/post/bharatiya-nyaya-sanhita-bill-2023-indian-penal-code-1860-an-annotated-comparison-summary-64e0b31241830

over six more decades, making it an anachronism unworthy of a modern, humane society.[1100]

2.2. The Constitutional See-Saw: Article 21 and the Right to Life

The constitutional validity of Section 309 IPC was the subject of a prolonged and vacillating judicial debate, primarily centred on its compatibility with Article 21 of the Constitution, which guarantees that "No person shall be deprived of his life or personal liberty except according to procedure established by law". This legal saga saw the judiciary grapple with profound philosophical questions about life, death, dignity, and the limits of individual autonomy, leading to a series of conflicting judgments that reflected a society in transition.

The first significant challenges to the law emerged from the High Courts. In *State v. Sanjay Kumar Bhatia* (1985), the Delhi High Court condemned Section 309 as "unworthy of a human society". This was followed by a more detailed constitutional challenge in the Bombay High Court in

Maruti Shripati Dubal v. State of Maharashtra (1986), which struck down the provision as violative of both Article 14 (Right to Equality) and Article 21. The court reasoned that if the fundamental right to freedom of speech and expression included the freedom not to speak, then logically, the right to life must include the right not to live, or to end one's life.[1101]

This line of reasoning culminated in the Supreme Court's decision in *P. Rathinam v. Union of India* (1994). A two-judge bench, affirming the Bombay High Court's view, declared Section 309 unconstitutional. The Court's core argument was that fundamental rights possess both positive and negative dimensions. Just as the right to freedom of speech under Article 19 implies a right to silence, the right to life under Article 21 must include a "right not to live a forced life". The judgment was a powerful endorsement of individual autonomy, viewing the person who attempts suicide not as a criminal but as a victim deserving of compassion. The Court famously observed that suicide is a "psychiatric problem and not a manifestation of criminal instinct," and that survivors need "soft words and wise counseling... not stony dealing by a jailor". The ruling was hailed as a progressive step towards humanizing India's penal laws.[1102]

However, this liberal interpretation was short-lived. Just two years later, a five-judge Constitution Bench in *Smt. Gian Kaur v. The State of Punjab* (1996) revisited the issue and decisively overruled *P. Rathinam*. The case before the Court concerned the constitutionality of Section 306 IPC (abetment of suicide), with the appellants arguing that if attempting suicide (Section 309) was not a crime, then abetting it could not be one either. In upholding the validity of both sections, the Court drew a crucial distinction. It held that the "right to life" is a natural right to live with human dignity and does not include the "right to die" or to extinguish life unnaturally. The Court reasoned that construing Article 21 to include a right to die would be a "contradiction in terms," as the right is fundamentally about the protection and preservation of life. However, in a moment of profound jurisprudential significance, the

Gian Kaur judgment simultaneously carved out and affirmed a different concept: the "right to die with dignity". The Court clarified that this right was not about an unnatural termination of life but about living a dignified life up to its natural conclusion, including a dignified process of dying. This subtle but powerful distinction re-criminalized attempted suicide by upholding Section 309 but also laid the

[1100] Bar and Bench. (2021). *2020 SUICIDE STATS*. Retrieved from https://images.assettype.com/barandbench/2021-11/32c3b7f1-e211-4e09-a3f2-d4eba129de38/2020_SUICIDE_STATS_.pdf

[1101] Bijal, et al. (2019). *Perceptions regarding the Indian Mental Healthcare Act 2017 among psychiatrists*. Global Mental Health, Cambridge University Press. Retrieved from https://www.cambridge.org/core/journals/global-mental-health/article/perceptions-regarding-the-indian-mental-healthcare-act-2017-among-psychiatrists-review-and-critical-appraisal-in-the-light-of-crpd-guidelines/30753CEAB50D4E848787FA3919F9CD1B

[1102] Press Information Bureau. (2008). *Law Commission Recommends Humanization and Decriminalization of Attempt to Suicide*. Retrieved from https://www.pib.gov.in/newsite/erelcontent.aspx?relid=43986

philosophical groundwork for future debates on end-of-life care and euthanasia.[1103]

The judicial conversation did not end there. The "right to die with dignity" articulated in *Gian Kaur* became the central pillar for the Supreme Court's landmark judgment in *Common Cause (A Registered Society) v. Union of India* (2018). In this case, the Court legalized passive euthanasia and gave legal sanctity to advance medical directives, or 'living wills'. While the primary focus was on end-of-life decisions for terminally ill patients, the Court took the opportunity to reflect on the broader legal landscape. It strongly recommended that Parliament consider decriminalizing attempted suicide, describing Section 309 as an "anachronistic" provision that forces a person who is already suffering into a "maza of penal consequences".

This judicial progression from *P. Rathinam* to *Gian Kaur* and finally to *Common Cause* is more than a series of legal corrections; it mirrors a profound evolution in India's societal and legal philosophy. *P. Rathinam* represented a bold, individual-centric leap, prioritizing personal autonomy. *Gian Kaur* served as a more cautious, conservative check, reasserting the State's interest in the sanctity of life while simultaneously opening a narrow, humanitarian window through the concept of "dignity in death." *Common Cause* pushed that window wide open, using the dignity principle to affirm patient autonomy in end-of-life care and, in doing so, signaling that the judiciary's perspective on attempted suicide had finally aligned with the global mental health discourse. This decades-long judicial dialogue effectively created the constitutional and moral legitimacy for the legislature to finally act, culminating in the reforms seen in the BNS.[1104]

3. The Legislative Bridge: The Mental Healthcare Act, 2017

While the judiciary debated the constitutional contours of Section 309, a parallel movement for legislative reform was gaining momentum, driven by recommendations from the Law Commission of India and a growing understanding of mental health. This culminated in the enactment of the Mental Healthcare Act, 2017 (MHCA), a landmark piece of legislation that, while not repealing Section 309, effectively rendered it toothless. The MHCA served as a crucial legislative bridge, formally shifting the state's response from a criminal justice framework to a public health and rights-based approach.

3.1. Section 115: The De Facto Decriminalization

The cornerstone of this shift is Section 115 of the MHCA. This provision was designed to neutralize the punitive effect of Section 309 IPC through a powerful legal mechanism. Subsection (1) begins with a non-obstante clause, "Notwithstanding anything contained in section 309 of the Indian Penal Code," which explicitly gives the MHCA's provision an overriding effect over the penal code.

The section then establishes a crucial, rebuttable legal presumption: "any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress". This presumption is directly tied to a legal consequence: such a person "shall not be tried and punished under the said Code". By framing the act of attempting suicide as a manifestation of "severe stress," the law effectively removed the element of *mens rea* (criminal intent) that is essential for a criminal conviction.[1105]

Furthermore, Section 115(2) went beyond simply decriminalizing the act; it imposed a positive,

[1103] Centre for Mental Health Law & Policy. (2023). *Takeaways from the NCRB data on suicide for 2022: insights from 6 charts*. Retrieved from https://cmhlp.org/imho/blog/takeaways-from-the-ncrb-data-on-suicide-for-2022/

[1104] Consortium Psychiatricum. (n.d.). *Mental health system in India: history, current system, and the future*. Retrieved from https://consortium-psy.com/jour/article/view/92

[1105] ResearchGate. (n.d.). *Analyzing the Provision of Section 309 of The Penal Code, 1860*. Retrieved from https://www.researchgate.net/publication/369925883_Course_Name_Criminal_Law_Course_Code_LLB_202_An_assignment_On_Analyzing_the_Provision_of_Section_309_of_The_Penal_Code_1860_for_the_Purpose_of_Evaluating_its_Rationale_and_Justification_Submitted_to

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affirmative duty on the State. It mandates that "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". This subsection marked the first explicit legislative pivot from a language of punishment to one of protection, care, and rehabilitation, legally obligating the government to act as a caregiver rather than a prosecutor.[1106]

3.2. Procedural Ambiguity and the Enforcement Gap

Despite the clear and progressive intent of Section 115, its coexistence with Section 309 on the statute books created significant procedural confusion and a persistent enforcement gap. The MHCA did not formally repeal Section 309; it only created a strong presumption against its application. This legal duality proved problematic in practice.

Law enforcement agencies, often lacking awareness or training on the nuances of the MHCA, continued to operate under the old framework of the IPC and the Code of Criminal Procedure (CrPC). When a person who had attempted suicide was brought to a hospital, the standard procedure of registering a Medico-Legal Case (MLC) and informing the police was often followed. This triggered a police inquiry, subjecting vulnerable individuals and their families to questioning, harassment, and the pervasive fear of prosecution. The very stigma and legal entanglement that the MHCA sought to eliminate persisted because the underlying criminal provision, however weakened, still existed.[1107]

This enforcement gap necessitated judicial intervention. Several High Courts had to step in to quash FIRs registered under Section 309, explicitly ruling that Section 115 of the MHCA has an overriding effect and that the statutory presumption of severe stress precludes trial and punishment. A 2024 Bombay High Court judgment, for instance, quashed an FIR against a woman who had attempted suicide, opining that "the statute itself precluded putting the said person on trial" in view of the presumption under the MHCA.

The practical challenges arising from this legal paradox served as a powerful argument for complete decriminalization. The MHCA, while a monumental step forward, inadvertently demonstrated that as long as Section 309 remained in the IPC, its punitive shadow would continue to undermine the therapeutic and rights-based objectives of the new mental health legislation. The confusion on the ground—for doctors, police officers, and citizens—made it clear that a clean legislative break was the only way to truly and effectively transition from a system of punishment to one of protection.

4. The New Legal Framework: The BNS and BNSS, 2023

The enactment of the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS) in 2023, effective from July 1, 2024, finally resolved the legal ambiguities surrounding attempted suicide. By fundamentally altering both the substantive and procedural laws, this new legislative package codifies the shift from a punitive to a protective approach, marking the definitive end of a colonial-era legal philosophy.

4.1. Substantive Decriminalization in the Bharatiya Nyaya Sanhita (BNS)

The most significant reform is what the BNS *does not* contain. The new Sanhita, which replaces the Indian Penal Code, 1860, completely omits any provision equivalent to Section 309. This legislative silence is profound. It signifies the formal, unequivocal, and complete decriminalization of the act of

[1106] HeinOnline. (n.d.). *Abetment to an Attempted Suicide: A Lacuna in the Indian Penal Code, 1860*. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nualsj19&section=16

[1107] IIHA. (2022). *Student Voices: A Humanitarian Approach Advocating Against the Criminalization of Suicide*. Medium. Retrieved from https://iiha.medium.com/student-voices-a-humanitarian-approach-advocating-against-the-criminalization-of-suicide-2bb8d018dcd1

attempting suicide in India. This move goes beyond the de facto decriminalization of the MHCA by removing the offence from the primary penal statute altogether, thus eliminating the legal paradox and enforcement gap that had persisted since 2017. The symbolic weight of this omission cannot be overstated; it represents a conscious uncoupling from a colonial legal tradition and a firm alignment with modern principles of human rights and public health.

4.2. A Carve-Out for Public Order: Section 226 of the BNS

While decriminalizing the act of attempted suicide as a manifestation of personal distress, the BNS introduces a new, narrowly tailored offence in Section 226 (this provision was numbered as Section 224 in some earlier drafts and reports). The provision reads:

"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."

It is crucial to analyze this section not as a diluted continuation of the old Section 309, but as a distinct offence aimed at maintaining public order. The key element here is the specific *intent*—"to compel or restrain any public servant." This provision is designed to address situations where the threat of suicide is used as a tool of coercion or protest, such as threats of self-immolation to influence a police investigation or hunger strikes to force government action. The inclusion of "community service" as an alternative punishment is a noteworthy reform, reflecting a modern, less carceral approach to sentencing for minor offences. In such cases, the onus will be on the prosecution to prove that the act was not a result of severe stress (as presumed under the MHCA) but was a calculated attempt to coerce a public official.[1108]

4.3. The Procedural Overhaul under the Bharatiya Nagarik Suraksha Sanhita (BNSS)

The procedural changes under the BNSS are as significant as the substantive changes in the BNS. Since attempted suicide is no longer a crime, the BNSS, which governs criminal procedure, logically contains no specific protocol for its investigation. The procedural shift is one of default: an attempt to commit suicide is now treated as a medical emergency, not a criminal incident.

The role of the police has been fundamentally redefined. Their involvement is no longer the default but is now triggered only under specific circumstances:

1. **Suspicion of Abetment:** If there is credible information to suggest that the suicide attempt was abetted by another person—an offence retained and punishable under Section 108 of the BNS—the police are duty-bound to conduct an investigation into the act of abetment.
2. **Offence under Section 226 BNS:** If the act prima facie falls within the narrow definition of attempting to coerce a public servant, the police may register a case under this specific section.

In all other instances, the incident falls squarely within the domain of the healthcare system. The primary responders are medical professionals, and the primary response is medical and psychiatric care, as mandated by the MHCA. The routine practice of registering an MLC and intimating the police is no longer required unless there is a clear suspicion of foul play or abetment. This procedural disentanglement is critical to fostering an environment where individuals and their families can seek

[1108] International Journal of Forensic Medicine and Research. (2024). *A Paradigm Shift in Police Training in India: Addressing Contemporary Challenges and Future Directions*. Retrieved from https://www.ijfmr.com/papers/2024/6/32031.pdf

immediate medical assistance without the fear of legal repercussions.

Table 1: Comparative Analysis of Legal Provisions on Attempted Suicide

Feature	**Section 309, Indian Penal Code, 1860**	**Section 115, Mental Healthcare Act, 2017**	**Bharatiya Nyaya Sanhita, 2023**
Status of the Act	Criminal Offence	Presumed to be an act of severe stress	Not an offence
Legal Presumption	Intention to commit the offence (*Mens Rea*)	Presumption of severe stress, unless proved otherwise	No presumption needed as the act is not an offence
Punishment	Simple imprisonment up to 1 year, or fine, or both	Shall not be tried and punished	No punishment. State has a duty to provide care
Specific Exception	None	Overrides Section 309 IPC	**Section 226, BNS:** Punishable if done with intent to compel/restrain a public servant. Punishment: Imprisonment up to 1 year, fine, or community service

5. From Statute to Street: Implementation Challenges and the Road Ahead

The legislative overhaul represents a clear and commendable statement of intent. However, the transition from a punitive to a protective regime is not merely a matter of amending statutes; it requires a fundamental transformation of institutional capacity, culture, and practice. The success of this reform will be determined on the streets, in hospital emergency rooms, and within police stations. Here, the ambitious legal mandate for care collides with the stark realities of India's public health infrastructure and the ingrained procedures of its law enforcement agencies.[1109]

5.1. Institutional Capacity vs. Rehabilitative Mandate

The new legal framework places the primary responsibility for responding to attempted suicide on the healthcare system. The MHCA's mandate to provide "care, treatment, and rehabilitation" is now the default state response. However, this legal right to care is being conferred within a system that is critically under-resourced to meet the demand. The scale of the challenge is immense, as evidenced by the latest data from the National Crime Records Bureau (NCRB).[1110]

Table 2: Key Suicide Statistics in India (NCRB 2022)

Indicator	Statistic (2022)
Total Suicides Reported	170,924
National Suicide Rate (per 100,000	12.4 (Highest ever recorded)

[1109] International Journal of Preventive and Public Health Sciences. (2024). *Mental Health Care Act 2017: Current Trends and Challenges in India*. Retrieved from https://www.researchgate.net/publication/392114637_Mental_Health_Care_Act_2017_Current_Trends_and_Challenges_in_India

[1110] LexisNexis. (n.d.). *Bharatiya Nagarik Suraksha Sanhita: Paradigm Shift from Procedural Code to Nagarik Suraksha*. Retrieved from https://www.lexisnexis.in/blogs/bharatiya-nagarik-suraksha-sanhita-paradigm-shift-from-procedural-code-to-nagarik-suraksha/

pop.)	
Percentage Increase from 2021	4.2%
Top 3 States (Absolute Numbers)	Maharashtra (22,746), Tamil Nadu (19,834), Madhya Pradesh (15,386)
Top 3 States/UTs (Rate)	Sikkim (43.1), Andaman & Nicobar (42.8), Kerala (28.5)
Leading Causes	Family Problems (31.7%), Illness (18.4%)
Most Vulnerable Profession	Daily Wage Earners (26.4%)

These statistics paint a grim picture of a deepening public health crisis. India's suicide rate is not only rising but is also significantly higher than the global average. The law now mandates that the estimated 25 times more individuals who

attempt suicide annually must be provided with care. The institutional capacity to deliver this care is, however, severely lacking. India has a staggering shortage of mental health professionals, with approximately 0.75 psychiatrists and 0.07 psychologists per 100,000 people, far below the desirable ratio. The National Mental Health Survey (2015-16) revealed a treatment gap of over 85% for common mental disorders.

The challenges already faced in implementing the MHCA 2017 serve as a cautionary tale. Years after its enactment, many states have struggled to establish the mandated Mental Health Review Boards (MHRBs), rendering provisions like Advance Directives practically unenforceable. The Act has been criticized for being overly bureaucratic, underfunded, and misaligned with the socio-cultural context where families, not just nominated representatives, are the primary caregivers. Without a massive and sustained investment in building a tiered mental healthcare system—from primary health centres to district hospitals and specialized institutions—the new legal right to care risks becoming a right that exists only on paper. This creates a dangerous chasm between the rights promised by the law and the reality of an under-resourced system, where a person who attempts suicide may be free from prosecution but may still be denied the timely and effective care the law now guarantees.

5.2. Reorienting Law Enforcement: From Enforcers to Facilitators

Perhaps the most formidable challenge lies in transforming the institutional culture of the police. For over a century, police officers have been trained to view attempted suicide as a cognizable offence under Section 309 IPC, requiring a criminal investigation. The new legal framework demands a complete reversal of this role: from enforcers of a penal provision to sensitive first responders who facilitate access to medical care.

This requires a massive effort in training and sensitization, which is currently inadequate. Reports indicate that police training curricula often overlook critical contemporary issues, including mental health crisis management. Officers are frequently exposed to high levels of occupational stress themselves, with limited access to mental health support, which can impact their ability to respond with empathy to citizens in crisis. The MHCA itself mandates periodic sensitization training for police officers, but implementation has been patchy at best.[1111]

Without a concerted national strategy to train police personnel on the new laws, the risks are manifold. Officers may remain unaware of the decriminalization, leading to the continuation of old practices of harassment and intimidation. They may lack the skills to de-escalate a crisis situation or to differentiate between a genuine mental health emergency and a case requiring investigation for abetment. The success of the new regime depends on the police officer at the

[1111] National Human Rights Commission. (2012). *Mental health education programme for police personnel.* Retrieved from https://nhrc.nic.in/press-release/mental-health-education-programme-police-personnel

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scene understanding that their primary duty is no longer to arrest, but to ensure the person's safety and facilitate their transfer to a healthcare facility. This shift from a law-and-order mindset to a care-and-facilitation mindset is a profound cultural change that cannot be achieved without dedicated, ongoing training and a clear directive from the highest levels of police leadership.[1112]

5.3. Addressing Procedural Gaps and the Need for SOPs

The transition to the new legal framework has created procedural vacuums that need to be filled urgently to avoid confusion on the ground. The repeal of Section 309 and the redefinition of the police role necessitate the issuance of clear, coordinated Standard Operating Procedures (SOPs) by the Ministry of Home Affairs and the Ministry of Health and Family Welfare. These SOPs must provide unambiguous guidance to all stakeholders, particularly medical professionals and police officers.

Several critical questions must be addressed:

- **Trigger for Police Involvement:** What are the specific, objective indicators that should prompt a medical officer in an emergency room to suspect abetment or foul play and consequently notify the police? Clear guidelines are needed to prevent both under-reporting of genuine criminal acts and over-reporting that leads to unnecessary police involvement in mental health crises.
- **Protocol for Limited Inquiry:** In cases of suspected abetment, how should the police conduct a preliminary inquiry? The procedure must be designed to be sensitive and non-intrusive, focusing on the alleged abettor while ensuring the person who attempted suicide is treated as a victim and a witness, not a suspect.
- **Data Collection and Surveillance:** With attempted suicide no longer a crime, these incidents will shift from being recorded in crime statistics (NCRB) to health statistics. A new, robust system for community-based suicide surveillance is essential. This requires training medical professionals in appropriate documentation and establishing a centralized database to track attempts, identify high-risk groups and regions, and inform targeted prevention strategies.

Without such clear and uniform SOPs, there is a significant risk of inconsistent and arbitrary application of the new laws across different states and districts, which would undermine the very purpose of the reform.[1113]

6. Conclusion : Consolidating the Shift Towards a Humanitarian Approach

The journey of India's law on attempted suicide—from a punitive colonial relic to a modern, rights-based framework—is a testament to the dynamic interplay between constitutional jurisprudence, legislative reform, and evolving societal values. The complete omission of Section 309 from the Bharatiya Nyaya Sanhita, 2023, is not merely a legal amendment; it is a profound declaration that individuals in the throes of a mental health crisis deserve compassion and care, not condemnation and punishment. This legislative act, buttressed by the procedural reorientation under the Bharatiya Nagarik Suraksha Sanhita, 2023, and the foundational principles of the Mental Healthcare Act, 2017, formally closes a dark chapter in India's legal history.

The new framework rightly repositions attempted suicide as a public health issue, shifting the primary responsibility of response from the criminal justice system to the healthcare system. It acknowledges the

[1112] National Library of Medicine. (2022). *De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them*. Retrieved from https://pmc.ncbi.nlm.nih.gov/articles/PMC9125455/

[1113] Oxford Human Rights Hub. (2018). *The Right to Die with Dignity: The Indian Supreme Court Allows Passive Euthanasia and Living Wills*. Retrieved from https://ohrh.law.ox.ac.uk/right-to-die-with-dignity-a-fundamental-right-indian-supreme-court-allows-passive-euthanasia-and-living-wills/

overwhelming evidence that such acts are almost invariably linked to severe stress and mental illness, and in doing so, aligns Indian law with global best practices and fundamental principles of human dignity. The careful carving out of a specific offence under Section 226 of the BNS for acts intended to coerce public officials demonstrates a nuanced legislative approach that balances humanitarian concerns with the need to maintain public order.

However, this report concludes that the enactment of these progressive laws is a necessary but insufficient condition for meaningful change. The legislative victory must now be translated into on-the-ground reality. The path forward is fraught with significant challenges that, if left unaddressed, could render this historic reform a hollow promise. The chasm between the legal right to rehabilitative care and the State's current capacity to provide it is vast. The deep-seated institutional culture of law enforcement, conditioned for over a century to view attempted suicide through a criminal lens, will not change overnight.

Therefore, the ultimate success of this paradigm shift will be measured not by the elegance of the statutes, but by the tangible outcomes they produce. It will be measured by the willingness of the government to make substantial, long-term investments in mental healthcare infrastructure; by the effectiveness of training programs in reorienting police personnel into compassionate first responders; and by the creation of a society where the stigma surrounding mental health is dismantled, allowing individuals to seek help without fear. The law has now laid the foundation for a more humane approach. The challenge ahead is to build upon it a robust, well-resourced, and accessible system of care that can save lives, restore dignity, and truly transform the promise of protection into a lived reality for every citizen in distress.[1114]

Table of Cases

S. No.	*Case Name*
1	*Maruti Shripati Dubal v. State of Maharashtra*
2	*State v. Sanjay Kumar Bhatia*
3	*P. Rathinam v. Union of India*
4	*Smt. Gian Kaur v. State of Punjab*
5	*Aruna Ramchandra Shanbaug v. Union of In*
6	*Common Cause (A Registered Society) v. Un of India*

7. Webliography

- Advocate Khoj. (n.d.). Humanization and Decriminalization of attempt to Suicide. Retrieved from https://www.advocatekhoj.com/library/lawreports/humanizationdecriminalization/2.php?Title=Humanization%20and%20Decriminalization%20of%20attempt%20to%20Suicide&STitle=Constitutionality%20and%20Desirabilty%20of%20Section%20309,%20IPC
- Advocate Khoj. (n.d.). Medical Treatment to Terminally Ill Patients. Retrieved from https://www.advocatekhoj.com/library/lawreports/medicaltreatment/6.php?Title=Medical%20Treatment%20to%20Terminally%20Ill%20Patients%20
- Ahmed, T., et al. (2022). Understanding India's response to mental health care: a systematic review of the literature and overview of the National Mental Health Programme. Journal of Global Health Neurology and Psychiatry. Retrieved from https://joghnp.scholasticahq.com/article/36128-understanding-india-s-response-to-mental-health-care-a-
- Article-14. (2023). Bharatiya Nyaya Sanhita Bill, 2023 & Indian Penal Code, 1860: An

[1114] Public Health Foundation of India. (2019). *Protecting our protectors: Important to discuss Stress & Mental Health Issues among Police Personnel*. Retrieved from https://phfi.org/protecting-our-protectors-important-to-discuss-stress-mental-health-issues-among-police-personnel/

Annotated Comparison. Retrieved from https://article-14.com/post/bharatiya-nyaya-sanhita-bill-2023-indian-penal-code-1860-an-annotated-comparison-summary-64e0b31241830

- AZB & Partners. (2023). 'MIND' the Gap: Addressing Challenges in Implementing the Mental Healthcare Act 2017. Retrieved from https://www.azbpartners.com/bank/mind-the-gap-addressing-challenges-in-implementing-the-mental-healthcare-act-2017/
- Bar and Bench. (2021). 2020 SUICIDE STATS. Retrieved from https://images.assettype.com/barandbench/2021-11/32c3b7f1-e211-4e09-a3f2-d4eba129de38/2020_SUICIDE_STATS_.pdf
- Bijal, et al. (2019). Perceptions regarding the Indian Mental Healthcare Act 2017 among psychiatrists. Global Mental Health, Cambridge University Press. Retrieved from https://www.cambridge.org/core/journals/global-mental-health/article/perceptions-regarding-the-indian-mental-healthcare-act-2017-among-psychiatrists-review-and-critical-appraisal-in-the-light-of-crpd-guidelines/30753CEAB50D4E848787FA3919F9CD1B
- BNB Legal. (n.d.). Decriminalising Despair: The Legal Evolution of Section 309 IPC in India. Retrieved from https://bnblegal.com/article/decriminalisation-suicide-india-section-309/
- Bureau of Police Research and Development. (2019). The Indian Police Journal. Retrieved from https://bprd.nic.in/uploads/pdf/201910220443407520366JULYSEPTEMBER20192.pdf
- Bureau of Police Research and Development. (2023). Comparison Summary BNS to IPC. Retrieved from https://bprd.nic.in/uploads/pdf/COMPARISON%20SUMMARY%20BNS%20to%20IPC%20.pdf
- Bureau of Police Research and Development. (2024). BNS Book After Correction. Retrieved from https://bprd.nic.in/uploads/pdf/BNS%20Book_After%20Correction.pdf
- Bureau of Police Research and Development. (2024). Vigilant India Police Training. Retrieved from https://bprd.nic.in/uploads/pdf/Vigilant%20India%20Police%20Training%20Aprile%20Issue---year-2%20(%20Issue%201-2)%20Date-01-30%20April%20Low.pdf
- Bureau of Police Research and Development. (n.d.). BNSS Handbook English. Retrieved from https://bprd.nic.in/uploads/pdf/BNSS_Handbook_English.pdf
- Casemine. (n.d.). P. Rathinam Another v. Union Of India. Retrieved from https://www.casemine.com/judgement/in/56ea7de9607dba371ebc9b5c
- Centre for Mental Health Law & Policy. (2023). Decriminalising attempted suicide in India: the new penal code. Retrieved from https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/
- Centre for Mental Health Law & Policy. (2023). Takeaways from the NCRB data on suicide for 2022: insights from 6 charts. Retrieved from https://cmhlp.org/imho/blog/takeaways-from-the-ncrb-data-on-suicide-for-2022/
- Centre for Mental Health Law & Policy. (2023). IPC Policy Brief. Retrieved from https://cmhlp.org/wp-content/uploads/2023/11/IPC-Policy-Brief.pdf
- Chambers and Partners. (n.d.). Validity of Euthanasia in India: Constitutional and Legal Approach. Retrieved from https://chambers.com/articles/validity-of-euthanasia-in-india-constitutional-and-legal-approach
- Chanakya National Law University. (2022). Mental Healthcare Act, 2017: Analysing

Through the Lens of Effective Implementation. Retrieved from https://cnlu.ac.in/storage/2025/04/Mental-Healthcare-Act-2017-Analysing-Through-the-Lens-of-Effective-Implementation-by-Hani-Dipti-Kaustubh-Kumar.pdf

- Consortium Psychiatricum. (n.d.). Mental health system in India: history, current system, and the future. Retrieved from https://consortium-psy.com/jour/article/view/92
- Cornell Law School. (n.d.). P. Rathinam v. Union of India. Retrieved from https://www.law.cornell.edu/gender-justice/resource/p_rathinam_v_union_of_india
- DataM Intelligence. (2024). India Mental Health Market. Retrieved from https://www.datamintelligence.com/research-report/india-mental-health-market
- Devgan.in. (n.d.). IPC Section 309 - Attempt to commit suicide. Retrieved from https://devgan.in/ipc/section/309/
- Devgan.in. (n.d.). BNS Section 226 - Attempt to commit suicide to compel or restraint exercise of lawful power. Retrieved from https://devgan.in/bns/section/226/
- Dhyeyalaw.in. (n.d.). Gian Kaur v State of Punjab. Retrieved from https://www.dhyeyalaw.in/gian-kaur-v-state-of-punjab
- Digilawyer.ai. (n.d.). IPC vs BNS. Retrieved from https://digilawyer.ai/blogs/ipc-vs-bns
- Drishti Judiciary. (n.d.). Attempt to Commit Suicide in BNS, Section 309 IPC. Retrieved from https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-%26-indian-penal-code/attempt-to-commit-suicide
- Drishti Judiciary. (n.d.). Comparative Analysis of BNS and IPC. Retrieved from https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/comparative-analysis-of-bns-and-ipc
- EBC India. (n.d.). Rathinam v. Union of India: A Critique. Retrieved from https://www.ebc-india.com/lawyer/articles/95v3a1.htm
- Government of India. (2023). The Bharatiya Nyaya Sanhita, 2023. Retrieved from https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf
- Government of India. (2024). Accidental Deaths & Suicides in India (ADSI) - 2022. Data.gov.in. Retrieved from https://www.data.gov.in/catalog/accidental-deaths-suicides-india-adsi-2022
- Government of India. (n.d.). National Crime Records Bureau (NCRB). Data.gov.in. Retrieved from https://www.data.gov.in/ministrydepartment/National%20Crime%20Records%20Bureau%20(NCRB
- Google Groups. (n.d.). Section 309 of IPC and the MentalHealthCare Act. Retrieved from https://groups.google.com/g/wethepwd/c/_f6h0nHjfH8
- HeinOnline. (n.d.). Abetment to an Attempted Suicide: A Lacuna in the Indian Penal Code, 1860. Retrieved from https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nualsj19&section=16
- IC3 Institute. (2024). Student Suicides: An Epidemic Sweeping India. Retrieved from https://ic3institute.org/wp-content/uploads/2024/09/Student-suicides-report-Digital.pdf
- IIHA. (2022). Student Voices: A Humanitarian Approach Advocating Against the Criminalization of Suicide. Medium. Retrieved from https://iiha.medium.com/student-voices-a-humanitarian-approach-advocating-against-the-criminalization-of-suicide-2bb8d018dcd1

- Indian Kanoon. (n.d.). Section 309 in The Indian Penal Code, 1860. Retrieved from https://indiankanoon.org/doc/1501595/
- Indian Kanoon. (n.d.). Section 115(1) in The Mental Healthcare Act, 2017. Retrieved from https://indiankanoon.org/doc/205297134/
- Indian Kanoon. (n.d.). 210Th Report On Humanisation And Decriminalisation Of Attempt To Suicide. Retrieved from https://indiankanoon.org/doc/73577534/
- International Association for Suicide Prevention. (n.d.). Decriminalisation. Retrieved from https://www.iasp.info/decriminalisation/
- International Journal of Forensic Medicine and Research. (2024). A Paradigm Shift in Police Training in India: Addressing Contemporary Challenges and Future Directions. Retrieved from https://www.ijfmr.com/papers/2024/6/32031.pdf
- International Journal of Law and Social Sciences. (2023). Navigating Legal Changes in BNS, BNSS, and BSA 2023. Retrieved from https://ijlsi.com/wp-content/uploads/Navigating-Legal-Changes-in-BNS-BNSS-and-BSA-2023.pdf
- International Journal of Preventive and Public Health Sciences. (2024). Mental Health Care Act 2017: Current Trends and Challenges in India. Retrieved from https://www.researchgate.net/publication/392114637_Mental_Health_Care_Act_2017_Current_Trends_and_Challenges_in_India
- International Journal of Publication and Research. (2024). A Systematic Literature Review of Mental Healthcare Act 2017. Retrieved from https://www.researchgate.net/publication/383860444_A_SYSTEMATIC_LITERATURE_REVIEW_OF_MENTAL_HEALTHCARE_ACT_2017