FROM SECTION 309 OF IPC TO SECTION 226 OF BNS: THE TRANSFORMATION OF LEGAL APPROACH TO ATTEMPTED SUICIDE AND HUNGER STRIKES IN INDIA

by

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ABSTRACT

Suicide is a complex issue that continues to exist in Indian society even today. Some individuals may feel that ending their lives is the only way to escape the difficulties and challenges they are facing. When such an attempt does not result in death, it is considered an attempt to commit suicide. Over time, the law relating to attempt to commit suicide in India has changed considerably. Earlier, under Section 309 of the Indian Penal Code, 1860, an attempt to commit suicide was made a punishable offence, and this approach was often criticised because a person who survives a suicide attempt may already be facing serious emotional, social or personal difficulties and may require support and care rather than punishment. The Mental Healthcare Act, 2017 brought an important change by recognising the severe stress faced by persons attempting suicide and emphasising care, treatment and rehabilitation. Subsequently, the Bharatiya Nyaya Sanhita, 2023 removed the general offence of attempt to suicide while retaining criminal liability only where the act is done with the intention of compelling or restraining a public servant from discharging official duties. This provision of BNS is particularly relevant to hunger strikes, which have historically been used in India as a method of protest to address grievances and demand governmental action. This article examines the changing legal approach towards attempted suicide and the legal position of hunger strikes in the context of criminal law and constitutional freedoms. It argues that a hunger strike should not automatically be treated as criminal offence and highlights the importance of examining the intention of the person and the circumstances of each case before applying Section 226 of the BNS.

Keywords: Suicide, Indian Penal Code, Bharatiya Nyaya Sanhita, Mental Healthcare Act, Hunger strike, Criminal liability.

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A. Introduction

Can a person who attempts to end their own life be regarded as an offender for violating the law if they survive the attempt, or should they instead be regarded as someone who needs care, protection and support rather than punishment? This question raises an important social and legal concern involving suffering of individuals, their mental well-being and dignity.

Suicide, which may sometimes be perceived as the only solution to a person's problems, is a sensitive issue that affects not only individuals but also society as a whole. In the past, people who attempted suicide were often labelled as mentally ill, insane, weak or cowardly. However, over time, there has been growing recognition that individuals who take such a big step to end their lives may be experiencing severe mental distress and require care and support.

The occurrence of suicide cannot be understood merely as a legal issue, as there are several social, emotional, psychological and economic factors that may lead a person to attempt suicide. Despite these underlying factors, for many years, the Indian legal system treated an attempt to commit suicide as a criminal offence under Section 309 of the Indian Penal Code, 1860.[1] However, the criminalisation of this act raised questions about whether punishment actually addresses the reasons behind a suicide attempt or merely adds another legal burden on a person who may already be in a vulnerable state. Later, this provision faced criticism because punishing a person who had survived a suicide attempt, without addressing the circumstances that led them to take such a serious step or providing them with appropriate care and support, was considered harsh and unjust.

The issue of attempted suicide has also been examined in the context of Article 21 of the Constitution of India.[2] This provides a constitutional perspective for understanding the changing legal approach towards attempted suicide, particularly the shift from general criminalisation under Section 309 of the IPC to limited criminal liability under Section 226 of the BNS.[3]

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B. Conceptual distinction: Attempt to suicide and right to die with dignity

Before examining the legal position of attempted suicide, it is necessary to understand the concepts of attempt to commit suicide, right to die and euthanasia. Although these concepts

[1] Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India).
[2] INDIA CONST. art. 21.
[3] Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India); Bharatiya Nyaya Sanhita, 2023, § 226, No. 45, Acts of Parliament, 2023 (India).

are closely associated with death, individual choice and personal autonomy, their meanings and legal implications differ.

Attempt to suicide refers to an intentional act by which a person tries to end their own life but survives the attempt. On the other hand, the right to die, particularly in the constitutional context, does not mean an unrestricted right to end one's life. The concept of the right to die with dignity is mainly associated with a person's dignity and autonomy at the end of their natural life.

Euthanasia is another concept related to the right to die with dignity. It generally means the intentional act of ending a person's life to relieve unbearable suffering caused by an incurable or terminal medical condition.

Thus, although the concepts of attempt to suicide, the general right to die, the right to die with dignity and euthanasia, may appear similar, are not interchangeable. Their distinction is important for understanding the subsequent legal changes.

C. Criminalisation of attempt to suicide under Section 309 of IPC

Under the earlier legal framework, Section 309 of the Indian Penal Code, 1860 provided that a person who attempted to commit suicide could be punished with simple imprisonment up to one year, or fine, or both.[4] The provision treated the attempt itself as a criminal offence, irrespective of the circumstances or reasons that led a person to take such a step. However, the provision was criticised because, instead of addressing the circumstances that led a person to attempt suicide, it treated the person who survived the attempt as an offender.

The constitutional validity of Section 309 was widely debated before the courts. In P. Rathinam v. Union of India, the Supreme Court adopted a broad interpretation of Article 21 and held that the right to life included the right not to live a forced life.[5] It observed that a person attempting suicide may already be suffering from mental distress and that prosecution could add more suffering to an already vulnerable person. It also suggested counselling, psychiatric care and humane treatment for such persons rather than imposing punishment. Accordingly, Section 309 was declared unconstitutional.[6] This judgement highlighted the dignity, personal choice and the suffering of a person who attempts to commit suicide.

Later, the Supreme Court overruled its earlier decision in Gian Kaur v. State of Punjab and held that the right to life under Article 21 does not include a general right to die.[7] The Court

[4] Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860 (India).
[5] P. Rathinam v. Union of India, (1994) 3 SCC 394.
[6] Id.
[7] Gian Kaur v. State of Punjab, (1996) 2 SCC 648.

further explained that the right to live with dignity includes the right to die with dignity when death is approaching naturally, and this right is distinguished from a right to prematurely end one's natural life, which the court refuse to recognise. The Court upheld the constitutional validity of Sections 306 and 309 of the IPC, thereby rejecting the earlier view.[8]

These two cases mainly dealt with the constitutionally validity of Section 309. However, the question of whether criminal punishment was the best response to a person who had attempted suicide continued to remain an important concern.

D. Mental Healthcare Act, 2017 and the Shift towards a Protective Approach

The Mental Healthcare Act, 2017, which replaced the Mental Health Act, 1987, introduced an important change in the legal approach towards persons who attempt to commit suicide. Section 115 of the Act presumes that a person who attempts to commit suicide is under severe stress and should not be tried and punished under Section 309 of IPC, unless any contrary is proved. It also places a duty on the government to provide proper care, treatment and rehabilitation to such persons so as to reduce the risk of recurrence.[9]

An attempt to suicide may be caused by several factors such as depression, anxiety, traumatic experiences, financial difficulties, family or relationship problems, job-related issues, academic pressure, social isolation, chronic health conditions and other major changes in life.[10] However, severe stress does not necessarily mean that a person has a mental illness. Each person’s situation may vary. Therefore, the circumstances behind the conduct should be properly examined and necessary medical care and counselling should be provided according to the needs of the concerned individual.

Section 115 of the Act substantially limited the practical application of Section 309 of the IPC, though it did not formally repeal Section 309 itself. While Section 309 remained in force, Section 115 shifted the focus more on care, treatment and rehabilitation rather than punishment.[11] In this way, Section 115 marked an important step towards a more humane and protective approach and paved the way for the subsequent change introduced by the BNS.

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[8] Id.
[9] Mental Healthcare Act, 2017, § 115, No. 10, Acts of Parliament, 2017 (India).
[10] East Point Hospital, *Suicide Prevention and Mental Health: Understanding the Importance of Asking for Help*, EAST POINT HOSPITAL (Sept. 10, 2026), [https://eastpointhospital.in/suicide-prevention-and-mental-health-understanding-the-importance-of-asking-for-help/].
[11] Ronak Pattanaik & Satya Narayan Pradhan,*Constitutionality of Attempt to Commit Suicide with Specific Reference to Mental Health Care Act 2017—A Brief Analysis*, 2(3) INT’L J. ADV. LEGAL RSCH. (2022).

E. From general criminalisation to limited criminal liability under Section 226 of BNS

The Bharatiya Nyaya Sanhita, 2023 represents another significant development. The BNS does not retain a general offence similar to Section 309 of the IPC, which criminalised every attempt to commit suicide. However, Section 226 of the BNS applies only where a person attempts to commit suicide with the intention of compelling or restraining a public servant from discharging their official duty. The provision prescribes simple imprisonment for up to one year, or fine, or both, or community service.[12] It mainly requires the prosecution to establish two essential ingredients: first, that the person attempted to commit suicide; and second, that the attempt was made with the specific intention of compelling or restraining a public servant from discharging his official duty.[13]

Although removing the general criminalisation of attempted suicide is a positive step, Section 226 still provides for punishment in specific circumstances, raising concerns in cases involving hunger strikes, self-immolation and other forms of protest against public authorities. People may use these protests to express their grievances or demand action from the government, but every hunger strike or protest does not necessarily constitute an offence under Section 226.The specific intention required under the provision must be established before criminal liability can arise.

The courts should carefully examine the conduct of the person, their intention, and the circumstances of the case. Its misuse could discourage people from engaging in peaceful protests and prevent them from raising genuine public issues that need due attention. Therefore, although the State has a duty to protect public servants from such unlawful conduct, it must also respect the right of people to express their views peacefully.

The retention of this provision may be justified in certain situations, as people may sometimes attempt to commit suicide to compel public officials to accept their personal demands or act against their official duties, thereby affecting the proper functioning of public administration. However, genuine hunger strikes undertaken to raise public grievances should not be treated as criminal offences. The law must clearly distinguish between genuine protests and attempts made with the specific intention covered by Section 226.

F. Hunger strikes, constitutional freedom of protest and criminal law

Hunger strikes are a form of protest in which persons deliberately refuse to eat food and, in some cases, water, to express grievances or demand change. In India, hunger strikes have

[12] Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), § 226.
[13] S.N. MISHRA, BHARATIYA NYAYA SANHITA , 2023, 818 (2026).

been used during the freedom struggle. The freedom fighters such as Mahatma Gandhi, Jatin Das, Bhagat Singh and Batukeshwar Dutt used fasting as a tool to raise political and social demands against the government of that time. Even after independence, this form of protest continued through activists such as Potti Sriramulu and Anna Hazare. In recent years, Manoj Jarange-Patil and Sonam Wangchuk have also undertaken hunger strikes concerning Maratha reservation and constitutional safeguards for Ladakh, respectively.[14]

The case of Irom Chanu Sharmila provides an important example of the legal treatment of hunger strikes. She started an indefinite hunger strike in 2000 against the Armed Forces (Special Powers) Act in Manipur following the killing of ten people, including two children, by personnel of the Assam Rifles.[15] She was repeatedly arrested and charged under Section 309 of the IPC in connection with her prolonged fasting. After around 16 years, she ended her hunger strike in 2016, stating that she felt she could never be able to succeed through fasting alone.[16] Her case illustrates how a political hunger strike may come into conflict with criminal law when the conduct is treated as an attempt to commit suicide.

The judiciary has taken a cautious approach while dealing with hunger strikes. In *Ram Sunder Dubey v. State*, the accused undertook a hunger strike to demand reinstatement in service. Although he claimed that he did not intend to die and was taking lemon juice twice a day during the fast, the courts found that he intended to continue fasting until death if his demand was not accepted.[17] This case highlights the importance of examining the intention and conduct of the protester in determining whether a hunger strike attracts Section 309 of the IPC.

In *P. Chandrakumar v. State by the Inspector of Police & Anr.*,the Madras High Court held that mere participation in a hunger strike will not attract the criminal liability under Section 309 of IPC.[18]

Hunger strikes were also viewed from a constitutional perspective. A hunger strike may be considered a form of peaceful protest protected under Article 19 of the Constitution, but the exercise of such freedoms is subject to reasonable restrictions.[19] In K. Thiagarajan @ Thozhar Thaigu v. Commissioner of Police, the court recognised fasting as a non-violent method of

[14] Drishti IAS,*Hunger Strikes as a Tool of Protest*,DRISHTI IAS (Aug. 2, 2024), https://www.drishtiias.com/daily-updates/daily-news-analysis/hunger-strikes-as-a-tool-of-protest (last visited on October 25, 2026)

[15] FRONT LINE DEFENDERS, *Irom Sharmila Ends Hunger Strike*(Aug. 1, 2016), https://www.frontlinedefenders.org/en/case/irom-chanu-sharmila-rearrested (last visited on 25, 2026)

[16] Id.

[17] Ram Sunder Dubey v. State (1990) AIR1961 All. 640.

[18] P. Chandrakumar v. State by Inspector of Police & Anr., Crl. O.P. No. 21 of 2016 (Madras High Court Feb. 15, 2021).

[19] INDIA CONST. arts. 19(1)(a), 19(1)(b) & 19(2).

protest and connected hunger strikes with the constitutional freedoms of speech and expression and peaceful assembly. It held that a proposed hunger strike could not be prohibited merely because it involved an indefinite fast, subject to reasonable restrictions.[20]

The above judicial decisions highlight the importance of examining the intention, purpose and circumstances behind a hunger strike before determining its legal consequences. Mere participation in a peaceful hunger strike should not be treated as an attempt to commit suicide under Section 226 of the BNS unless the specific intention required under the provision is established. Therefore, the constitutional protection of peaceful protest and the application of criminal law must be considered together while examining such cases.

G. Conclusion

The approach of the legal system towards attempted suicide in India has gradually undergone a significant transformation, focusing on care and protection with a move towards limiting the criminal liability of persons who attempt to commit suicide. The introduction of Section 115 of the Mental Healthcare Act, 2017 and Section 226 of the BNS shows that the law has developed a better understanding of the difficulties faced by such persons. However, the removal of the general offence of attempted suicide under the BNS raises questions regarding hunger strikes and other forms of protest. The State, while having a responsibility to protect human life and ensure the proper functioning of government, must also respect the constitutional freedoms of individuals. Treating a hunger strike that genuinely raises public grievances as a criminal offence is unfair merely because it involves fasting or is directed against a public authority. Therefore, Section 226 of the BNS must be carefully interpreted by considering the intention of the person concerned and the circumstances of each case, so that the limited purpose of this provision is maintained without unnecessarily bringing genuine cases of distress or peaceful protest within the scope of criminal liability.

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[20] K. Thiagarajan @ Thozhar Thaigu v. Commissioner of Police, W.P. No. 26930 of 2013 (Madras High Court 2013).