

## Why is now the time to do away with Section 309?



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- Why is now the time to do away with Section 309?

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## Lead Essay

### Why is now the time to do away with Section 309?

For a country that is waiting to reap benefits off its young demographic, it should come as a shock that this 'prized' section of the population is increasingly subjecting itself to self-harm.

The recently released report by the Lancet Commission on Adolescent Health and Well-being (Mascarenhas 2016) found that suicide was the leading cause for death among youngsters (age group 10-24 years) claiming 62,960 young lives in India in 2013. Although the Lancet report has revealed these facts only now the National Crime Records Bureau Data report an increasing number of deaths by suicide by the youth.<sup>1</sup>

The pertinent question is- why should these numbers bother us now given the fact that these statistics are not new? In fact self-harm as a major cause of death was identified in 1990, when it was ranked as the third biggest cause for deaths in the age group 20-24 years. In a span of more than a decade though self-harm has made inroads into an even younger age group.

#### Section 309 a hindrance for policy makers?

The Indian Penal Code punishes anyone who attempts to commit suicide and does any act towards the commission of this offence, with maximum imprisonment of one year. The basis of criminalizing an attempt to take one's life stems from the constitutional guarantee of right to life which is not considered to encompass within itself the right to die or take one's life. After some back and forth on the validity of right to die by the Apex court in landmark cases of *P.Ratinam*, *Gian Kaur* and *Aruna Shanbaug*, it passed the baton to the Parliament accepting that it is time that right to die be recognised and the Parliament legislate with regard to the same. (Bhan 2014)

The need to do away with Section 309 is not just to settle the debate regarding whether the right to life includes the right to die. It has further implications beyond the realms of legal world. Consider this example- doing 'X' is an offence. Therefore every time someone does X they also try to hide that they did it because the act of doing it is punishable. If we then needed to find out reasons why people indulged in committing X it would not be easy because people would not willingly talk about it for fear of punishment. X metaphor is a metaphor of criminalization of attempt to suicide. It is evident how the good intention of protecting life by punishing anyone who takes it away, the punishment has to a large extent become an impediment in bringing down the number of suicides.

This concern has also been very well articulated by the 210<sup>th</sup> report of the Law Commission (Humanization and decriminalization of attempt to suicide 2008). It has been observed that many who survive their attempted suicides refrain from seeking medical help for fear of being punished. The report further mention that continuance of imposing criminal liability for an attempt to suicide hinders emergency treatment for such cases since they fall in the category of medico-legal case. Often doctors refuse to help unless the police are involved. The already hassled family members have to deal with police procedures since the attempt is a crime. Not to mention the gross under reporting of these cases which are an obvious result of the existence of Section 309.

Although we have statistics of the number of persons committing suicide but do we know the number of persons who have attempted to commit suicide? (Bhan 2014) We are not able to gauge the correct number of those who have attempted suicide. Chances of being punished for these attempts in addition to other socio-cultural prejudices prevent individuals from coming forward. Thus we are largely kept in dark and impaired from assessing the reasons for growing instances of suicide.

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<sup>1</sup> 50-60,000 of the youth committed suicides in 2014, the Million Death Study (2012) said this figure underestimated true suicide numbers by up to a third: thus, the actual numbers may approach even one lakh deaths a year (Mascarenhas 2016)

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A call to action to this government is two pronged- one, decriminalize suicide caused due to self-harm done by individuals; and two, disseminate information to create awareness about suicides by individuals to release it from being a taboo.

### **Previous attempts to decriminalize section 309- failures or just half-hearted moves?**

The present government had propelled itself as a messiah for the unfulfilled aspirations of youth back in 2014 and still continues to largely centre its policy decisions keeping them in mind. Schemes like Skill India Mission, Start-up India and Make in India to quote a few are all targeted at the youth, to raise a belief that this government is a true representative of this section of the population.

Should we then consider the number of initiatives, aimed to increase the employability of the youth, to be the determinant of how much this government cares about the welfare of India's young? This clearly is a flawed approach.

How do we then understand the lack of initiative of the present government to debate on the pending Mental Health Care Bill 2013 which laid down a proper treatment for persons attempting suicide despite being aware of the statistics mentioned above? The lack of such legislation in addition to the fact that attempt to commit suicide is a penal offence, restricts policy makers to assess the cause for the increasing number of suicides.

A first of its kind National Mental Health Policy (NMHP) released by this government had a separate section on reduction of suicide and attempted suicide. (New pathways new hope 2014) This policy is nothing short of a paper tiger. Not only are the recommendations cursory but the policy lacks strong directives that would bring about a change in the attitude towards individuals committing suicide. Understandably this policy has shaky foundations as it deals with reducing a 'criminal offence', what better deterrent than imprisonment itself for attempted suicide?

The first challenge of decriminalization of Section 309 was identified but not obviated. After a lot of initial excitement and promises made by the BJP soon after coming to power, it failed to pursue decriminalization of Section 309. A declaration was made by this government to decriminalize attempt to suicide in the Rajya Sabha (Rajagopalan 2015). But just like the NMHP, this promise of the government too has been lost in a multitude of others.

### **Political advantage of letting section 309 be**

The right to protest is a constitutional guarantee under Article 19(1)(b) which allows 'right to assemble peaceably and without arms'. The strength of organized masses has the potential to act as an effective check and balance for a democratically elected government, and also prove to be its worst nightmare.

It has been observed in the past that popular leaders resorting to fasts are booked under Section 309 of the IPC in order to prevent them from continuing. Whether it was the fast unto death by Anna Hazare in 2011 or the struggle of Irom Sharmila since 2000, both of them saw police intervention as soon as their acts were well within an attempt to take their lives. ((De-) Criminalization of attempted suicide in India- A Review 2014) Ironically 'suicide' is not defined by the section, leaving it open to interpretation.

It should come as no surprise that this section 309 has its uses as an important tool to put a rest to peaceful hunger protests since inevitably it there will be danger to health of such protestors down the line. Is this then what motivated the present government to first create uproar for decriminalization and then fall silent?

### **Decriminalization benefits the youth**

It is nobody's argument that decriminalizing suicide attempts will in turn cause their increase. Most of the liberal countries like those in North America and Europe have decriminalized these attempts and there are no indications to

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show that the number of suicides post this has seen an increase. On the contrary in a country like Singapore that considers attempt to suicide as a punishable offence has seen an increase in the number of suicides, clearly criminalizing these attempts is definitely not curtailing their numbers. (Humanization and decriminalization of attempt to suicide 2008)

After countries ceased to punish attempted suicide individuals were able to access therapy and proper treatment to deal with their problems. To put this decriminalization plea in perspective, we could consider looking at the recent suicide by a young IIT aspirant in Kota. (Times 2016) We are talking about this incident because the suicide has drawn attention of the media and society. But if it were only an attempt would it have reached the media? The reason for this suicide is cited to be the pressure this particular aspirant faced in the coaching centres. This reason is not new. That this aspirant is the only one under such pressure cannot be a logical conclusion. Can other students be prevented from succumbing to this pressure is a question that will remain unanswered since not only is an attempt to suicide a sensitive topic but also a non-legal one.

If the approach was to understand the causes of suicide, we could have prevented replication of the same incident. But we are bound by the fact that no individual would come forward to surrender and be charged of a criminal offence; especially one which involves the delicate state of their mind.

The age group of 10-24 years quoted to die because of self-harm most number of times is a naive age group. They cannot be blamed for being unable to cope with pressures and expectations of fast changing times. Attempts to suicide by any individual most of times are due to a weak mental health for which they need help not imprisonment, especially for the youth. If only we had logistics to assess the causes of these attempts with individuals and families coming forward we could have helped this vulnerable section of youngsters. Until this government acts upon a promise it did make in 2014 in the Upper House of the Parliament the youth of this country will remain outside the purview of help they could be afforded.

### What next?

Post the latter half of 2014, which saw a lot of heated discussions about decriminalization of section 309 by the government, the voices have died down. A sort of perfunctory mention in the Question Hour of this session of some pending amendments in the Criminal Procedure Code including decriminalization of suicide is what this subject has been reduced to. (Government considering amending laws on suicide, accidents 2016)

As the draft bill to allow passive euthanasia is being proposed by this government, the need to consider attempt to suicide sans criminal liability is pressing. Since law and order is a concurrent list subject the decision of the states in this regard matters as well. A lack of full support from all states is cited as a reason why the government could not go ahead with the decriminalization. (Singh 2014) There is definitely a need to identify different categories of suicide. This has been attempted by the 210<sup>th</sup> Law Commission Report which mentions different non-natural forms of death including those motivated by religious, psychological concerns as well as those aimed to induce terror, like suicide-bombers.

If the rise in number of suicides in general and amongst the youth in particular needs to adequately solved, the government needs to think about decriminalization of Section 309 not by simply 'effacing it from the statute' but by reformulating the parameters of criminalizing suicide. Also, mental health care needs to be legislated upon since many factors leading to suicides find roots in the mental health of individuals. To have a robust youth to cater to and bank on, this government needs to pull up its socks and cater to what is troubling the young so much as to push them off the edge.

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## Headlines

### **Malegaon Blasts: NIA Says ‘Military Grade RDX’, But Quiet on Source**

(Deeptiman Tiwary, *The Indian Express*, May 16, 2016)

The NIA chargesheet in the 2008 Malegaon blasts may have rejected the Maharashtra ATS claim that the explosives were sourced by Lt Col Prasad Purohit, but it agrees that the explosives were “military grade RDX”. Such explosives can only be procured from the Army or a terror group. The Maharashtra ATS drew this conclusion from forensic tests of swabs taken from the blast site. The NIA has not questioned this report.

In its chargesheet, however, the NIA is silent on the source of the explosives, which, it says, its probe could not establish due to the “time lag”. The Malegaon blasts probe was handed over to the NIA in 2011.

Read More: <http://indianexpress.com/article/india/india-news-india/malegaon-blasts-nia-says-military-grade-rdx-but-quiet-on-source-2802731/>

Date Accessed: 16.05.2016

## Governance & Development

### *POLITICS AND GOVERNANCE*

#### **Does Political Reservation Affect Voting Behaviour?**

(Yuko Mori and Takashi Kurosaki, *The Economic and Political Weekly*, May 14, 2016)

An empirical examination of the impact of political reservation for disadvantaged groups on voting behaviour, using microdata from the National Election Study 2004, shows that in a reserved constituency, where only members of the disadvantaged castes can stand for election, voters of the disadvantaged castes are encouraged to vote. On the other hand, the system of constituency reservation does not have any impact on turnout of voters belonging to other groups, including relatively upper-caste voters. This finding suggests that political reservation does not crowd out electoral participation of other groups.

Read More: <http://www.epw.in/journal/2016/20/special-articles/does-political-reservation-affect-voting-behaviour.html#sthash.YWUMDWmh.dpuf>

Date Accessed: 16.5.2016

#### **Ask No Questions**

(Gladson Dungdung, *The Indian Express*, May 16, 2016)

The fact is many Indians seem to think that human rights is a western idea and like many other things western — dress, food and culture — a threat to “Indian culture”. In their definition, Indian culture is about submission to the Brahminical social order. Human rights activists are those who seek to protect Naxals and terrorists and, thereby, work against the interests of the country. We are seen as anti-state and our travels abroad are construed as trips meant to defame the country. We are even accused of being on the payroll of foreign agencies to undermine India’s progress. Whoever raises uncomfortable questions is seen as an enemy of the state. There is no willingness to engage with dissenting voices. But can democracy survive without dissent? Can India claim to be a true democracy if the state itself curtails the freedoms guaranteed by the Constitution?

Read More: <http://indianexpress.com/article/opinion/columns/jharkand-activist-forest-rights-act-human-rights-environment-activist-2802460/#sthash.nOwLhwMI.dpuf>

Date Accessed: 16.5.2016

### *GOVERNMENT*

#### **Punjab Government Plays it Safe, Allows Radical Jathedars to Visit Golden Temple**

(Harkirat Singh, *Hindustan Times*, May 15, 2016)

Being an election year, the Badal government on Sunday decided to play it safe, allowing jathedars appointed by radical Sikh groups to pay obeisance at the Golden Temple amid large presence of police inside the shrine. The police kept a close watch on jathedars and a handful of supporters.

Earlier in the day, there were apprehensions that the government might arrest the radical jathedars near the “samad” of Baba Naudh Singh on the Tarn Taran road before they entered the city. However, following talks with police officials and after giving assurance that they were here to pay obeisance, radical jathedars with their 50-odd supporters were allowed to move towards the shrine.

With assembly polls due early next year, the government does not seem too keen to enter into confrontation with the radicals, lest matters go out of hand, as it happened after incidents of desecration of the Guru Granth Sahib in the state last year.

Read More: <http://www.hindustantimes.com/punjab/punjab-govt-plays-it-safe-allows-radical-sarbat-khalsa-jathedars-mand-daduwal-to-visit-golden-temple/story-mo7cugVNyIQTyg5vgR1ExL.html>

Date Accessed: 16.05.2016

## Governance & Development

### EDUCATION

#### Indians Increasingly Prefer Private Education

(Devanik Saha, *India Spend*, May 16, 2016)

As many as 62% of children in India attended a government primary school in 2014, compared to 72.6% in 2007-08—indicating a surging preference for private schools—according to an **IndiaSpend** analysis of data in a [recent survey on education](#) released by the National Sample Survey Organisation (NSSO). At the upper primary level, the percentage of students in government schools reduced from 69.9% in 2007-08 to 66% in 2014. An urban-rural divide is evident: Only 31% of children attended government primary schools in urban areas, against 72.3% in rural in 2014. Yet, this does not mean learning outcomes have improved.

Read More: <http://www.indiaspend.com/cover-story/indians-increasingly-prefer-private-education-71-million-take-tuitions-58576>

Date Accessed: 16.5.2016

### HEALTH

#### Five Newborns Die in Government Hospital in Ajmer

(*The Huffington Post*, May 15, 2016)

Five newborns admitted to the neonatal unit of JLN Government Hospital in Ajmer have died since last night, prompting authorities to start a probe.

The newborns were from Bhilwara, Merta city, Pisangan, Nasirabad and Beawar. They were suffering from septicemia, premature birth and respiratory problems, Dr K K Soni, CMHO Ajmer said.

They died last night and in the morning, he said.

"A committee of three doctors has been formed today to probe the matter and it will submit its report to the district Collector in the evening," Dr Soni said.

Read More: [http://www.huffingtonpost.in/2016/05/15/newborns-die-in-hospital\\_n\\_9978778.html?utm\\_hp\\_ref=india](http://www.huffingtonpost.in/2016/05/15/newborns-die-in-hospital_n_9978778.html?utm_hp_ref=india)

Date Accessed: 16.05.2016

### ENVIRONMENT

#### Conservation Suffers as Roadkills in Chinnar Sanctuary Shoot Up

(Giji K. Raman, *The Hindu*, May 16, 2016)

Conservation has suffered a severe jolt with roadkills in the Chinnar Wildlife Sanctuary accounting for a large number of fatalities over the past six months, mainly owing to lack of strict measures to enforce speed limits on vehicles on the Chinnar-Udumalpet road.

A study conducted by the Kerala Forest Research Institute (KFRI), Peechi, has found as many as 85 roadkills in the past six months within the sanctuary limits.

An official of the sanctuary told *The Hindu* that the Chinnar sanctuary accounts for one of the highest number of roadkills during the period compared to sanctuaries in other States.

Read More: <http://www.thehindu.com/sci-tech/energy-and-environment/conservation-suffers-as-roadkills-in-chinnar-sanctuary-shoot-up/article8604749.ece?homepage=true>

Date Accessed: 16.06.2016

## Governance & Development

### LAW AND JUSTICE

#### Collegium's Picks for Supreme Court Get Okay

(Ahinav Garg, *The Times of India*, May 12, 2016)

Moving swiftly, the Centre on Wednesday issued warrants of appointment for four names recommended by Collegium for Supreme Court judgeship. Sources in the law ministry said the President of India cleared and issued warrants to appoint to SC, Chief Justice A M Khanwilkar of the Madhya Pradesh high court, Chief Justice D Y Chandrachud of the Allahabad high court and Chief Justice Ashok Bhushan of the Kerala high court and former additional solicitor general L Nageswara Rao.

Last week, the SC Collegium headed by Chief Justice of India T S Thakur had recommended the four names for elevation to the apex court.

The government's sense of urgency in clearing the appointments is significant as it comes in the backdrop of CJI Thakur's emotional speech in presence of Prime Minister Narendra Modi recently, where he lamented delay by the Centre in clearing appointment of names sent by the Collegium.

Read More: <http://timesofindia.indiatimes.com/city/delhi/Collegiums-picks-for-SC-get-okay/articleshow/52232473.cms>

Date Accessed: 16.05.2016

### SOCIAL JUSTICE

#### Mining at Any Cost: The Odisha Government's Continued Dismissal of Adivasi Rights

(Chitrangadha Choudhury, *The Wire*, May 16, 2016)

This February, the Odisha government moved the Supreme Court asking that it annul the 2013 gram sabha resolutions through which 12 villages in the Kalahandi and Raygada districts opposed bauxite mining in the densely forested Niyamgiri mountain range. It urged the court to set aside the denial of forest clearance to the proposed mine, and/or order for fresh gram sabhas to be held.

The state government's petition marked the latest cussed move in a 15-year-old project, which has become a poster child for the violence and lawlessness that underlie mining and allied industrialisation in Odisha – phenomena that have intensified in Adivasi areas of the state in this period. On April 1, a three-judge bench asked that the government to file a modified petition that impleads the gram sabhas. However, on May 6, the apex court refused to entertain the revised petition.

The Odisha government's hopes to push through a deeply contested mine through judicial fiat have been dashed for now. But the petition's content merits attention for what it says about the government's stubborn belief that lucrative mining interests should trump democratic devolution, Adivasi resource rights and even legality.

Read More: <http://thewire.in/2016/05/16/mining-at-any-cost-the-odisha-governments-continued-dismissal-of-adviasi-rights-35711/>

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