



LEGISLATION AND JURISDICTION OF SUICIDE LAWS IN INDIA: CONFLICTS AND RETROSPECTIVE ANALYSIS

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Introduction.

the presented paper discusses the fundamental right of Indian constitution with emphasis on right to life. The paper aims to bring forth in discussion the Indian laws on suicide, the history and emergence of suicide prevention laws. The paper discusses, The IPC which is the main Statute in India, Governing all criminal acts and offences, and the punishments that ought to be handed out for said offences, alongside Medical healthcare act 2017.

**SOME OF THE MAIN QUESTIONS WE HIGHLIGHT IN THIS PAPER
WILL BE :**

1. Is right to die/die with dignity, a fundamental right confided safely within an individuals right to life and should be interpreted as such?
2. The reasoning behind criminalization of attempted suicide in India, historical context.
3. What is medical healthcare Act 2017 and where does Euthanasia stand on the subject?
4. How does Medical Healthcare Act 2017 come into conflict with Section 309 and why?

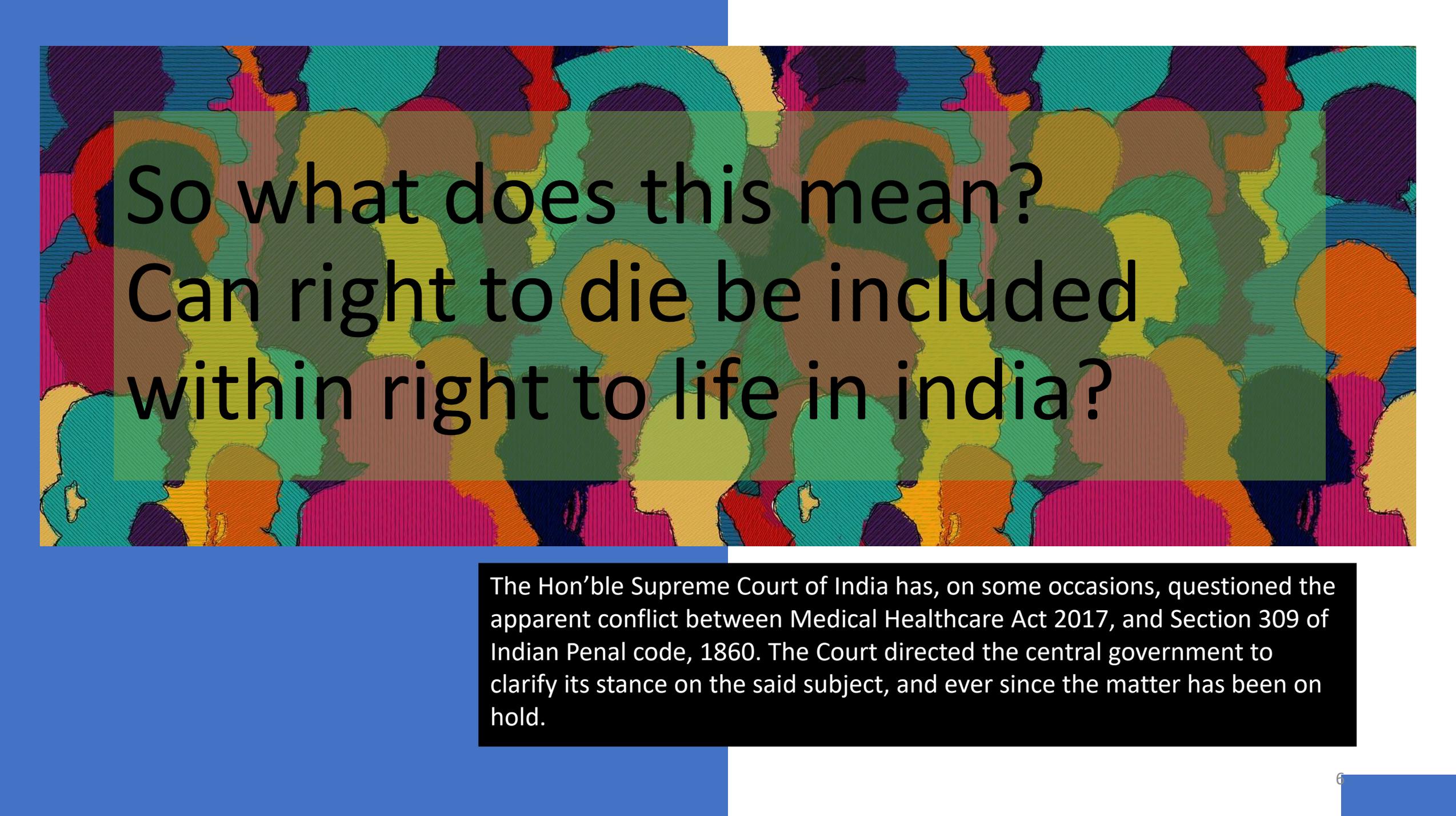
Looking at statistics of suicide in India a total of 1,53,052 suicides were reported in the country during 2020 showing an increase of 10.0% in comparison to 2019 and furthermore, the rate of suicides has increased by 8.7% during 2020 over 2019. Statistics provided by National Crime Records Bureau Ministry of Home Affairs. Every year, more than 1,00,000 people commit suicide in our country.

The spike in the rate of suicides committed is alarming, and one has to question what are the laws in place preventing it?

Section 309 of Indian Penal Code.

A section that has long been under fire, the objective of enacting the IPC was to provide a general and exhaustive penal code for crime in India. 309 states :

“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].”



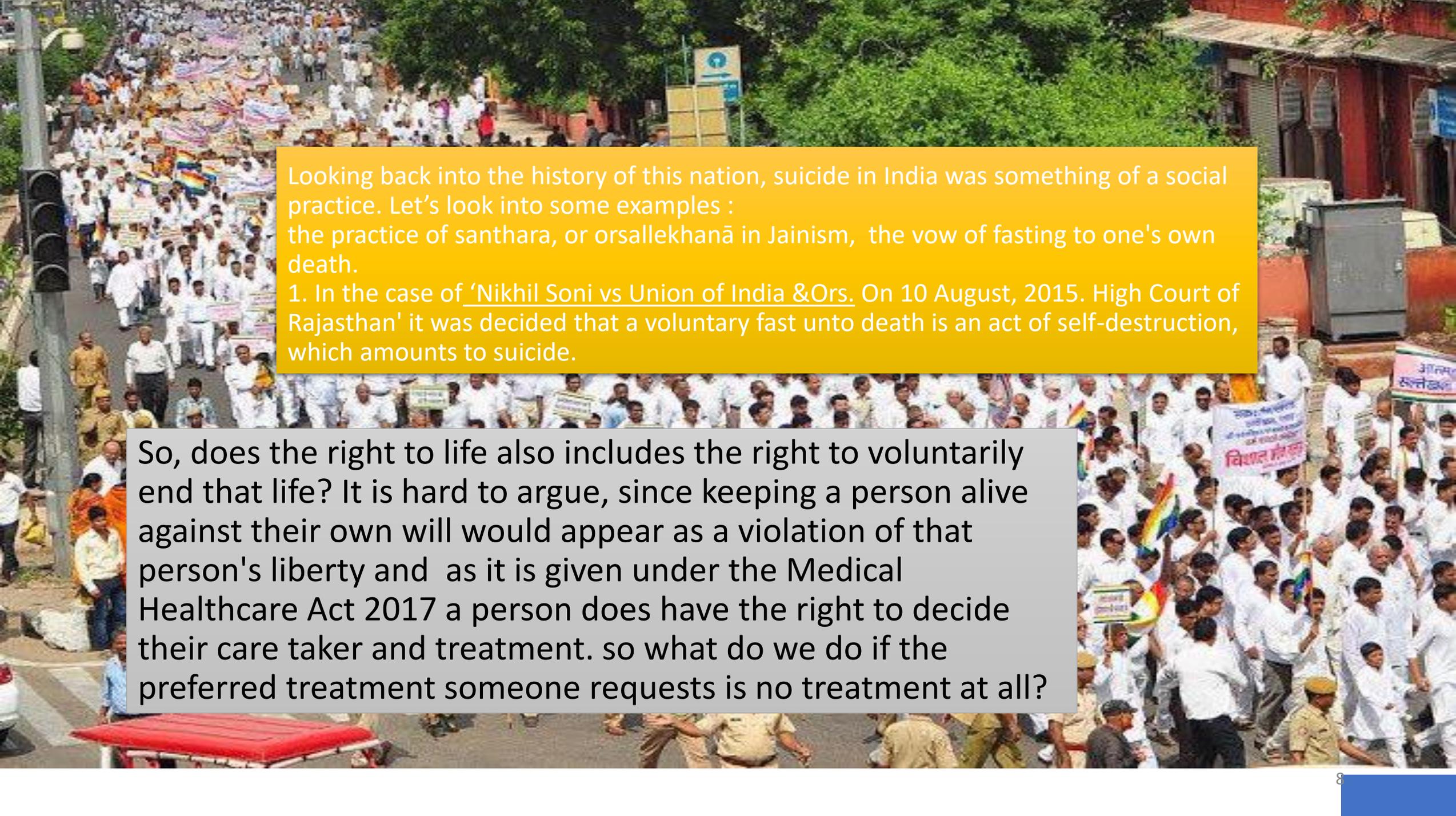
So what does this mean?
Can right to die be included
within right to life in india?

The Hon'ble Supreme Court of India has, on some occasions, questioned the apparent conflict between Medical Healthcare Act 2017, and Section 309 of Indian Penal code, 1860. The Court directed the central government to clarify its stance on the said subject, and ever since the matter has been on hold.

The problem is, Section 309 of IPC criminalizes the attempt of suicide but Medical Healthcare act 2017 says one cannot be punished for it. Courts from different states have given contradictory judgements on the matter and overall the government has been undecisive.



Why is that? Well, We can understand the complicated nature and contradictions by looking at India's cultural practices and delve into the deep historical context behind the practice of suicide that influences its laws here in India.



Looking back into the history of this nation, suicide in India was something of a social practice. Let's look into some examples :
the practice of santhara, or orsallekhanā in Jainism, the vow of fasting to one's own death.

1. In the case of 'Nikhil Soni vs Union of India &Ors. On 10 August, 2015. High Court of Rajasthan' it was decided that a voluntary fast unto death is an act of self-destruction, which amounts to suicide.

So, does the right to life also includes the right to voluntarily end that life? It is hard to argue, since keeping a person alive against their own will would appear as a violation of that person's liberty and as it is given under the Medical Healthcare Act 2017 a person does have the right to decide their care taker and treatment. so what do we do if the preferred treatment someone requests is no treatment at all?



Sati pratha,

Section 2 (c) The Commission Of Sati (Prevention) Act, 1987 defines sati as :

Sati means the burning or burying alive of

(i) *Any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or*

(ii) *Any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise.*

The Commission of Sati (Prevention) Act 1987, is enforced but not to the strength it should be as is obvious by Roop Kanwar's sati in 1987 and Kuttu Bai in 2002. more needs to be done.

And this is the ultimate dilemma,
We saw Santhara a voluntary practice of suicide and sati a forced practice.
On one side, keeping IPC 309 of 1850, will help stop the still continued practice of sati, but on the other it will greatly complicate the position of Jain practitioners.

Removal of section 309 will leave many women living in rural areas like Deorala and Patna village defenseless against sati and similar practices. As removal will also directly affect section 206 which is abetment of suicide. Safeguarded by Abolishment of Sati act.



The continued existence of section 309 is a suppression on the religious freedoms of a minority. Jains should have full capacity to practice their beliefs without facing imprisonment or fines, as it is their fundamental religious right.

So what do we do?

On 7 March 2011, the Supreme Court recommended that Parliament consider deleting section 309 from the statute.[11]

On 10 December 2014, in response to a question by Vivek Gupta in the Rajya Sabha on decriminalization of suicide, the Minister of State for Home Affairs, Haribhai Chaudhary replied that “it has been decided to delete Section 309 of IPC from the Statute book.”

On 24 February 2015, the Minister of State in the Ministry of Home Affairs, Haribhai Parathibhai Chaudhary again, said that a proposal to delete Section 309 from the Indian Penal Code had been sent to the Legislative Department of the Ministry of Law and Justice for drawing up a draft Amendment Bill.

But it was finally on the date of March 27, 2017, when Lok Sabha in a unanimous decision passed the Mental Healthcare Act, 2017, which was initially passed in Rajya Sabha on August 2016 and got its approval from the Honorable President of India on April 2017.

Medical Healthcare Act 2017.

This new act defines “mental illness” as a substantial disorder of thinking, perception, mood, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs.” This act itself rescinds/revoked the existing Mental Healthcare Act 1987 its predecessor, which had been strongly criticized for not recognizing the rights of a mentally ill person.



The objective of the Act said, as per quoted :

“An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.”

Keeping all this in mind, what about assisted suicides, euthanasia?

Euthanasia.

Aruna Ramchandra Shanbaug vs Union Of India & Ors. From India, Common Cause v. Union of India being two prominent cases that come to mind in regards to Indian law and, Airedale N.H.S. Trust v Bland [1993] A.C. 789 House of Lords as well as the case of Janet Johnstone, being the cases from United Kingdom and Scotland respectively.

'Right to die' is a subject under controversy but undisputedly, right to lead a good life with necessary facilities that a human requires is well protected and if we look at the present mental institution, staffing, and equipment provided in India, they are in a horrendous condition. A person should not be forced to live a life they do not desire, in conditions not appropriate for them.



Medical responsibility.

According to a study conducted by the National Institute of Mental Health and Neurosciences, 1 in 40 and 1 in 20 people are suffering from the past and current episodes of depression in India.

Although Section 115 (2) of Medical Healthcare Act 2017 provides 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.”*

Persistent problems –
the stigmatization of mental illnesses.

Poor infrastructure and lack of equipped mental health professionals, there are about 40 mental institutions (out of which only nine can provide treatment for children) and fewer than 26,000 beds available for a nation comprising 150 billion people. In no way is this sufficient.

THE CONFLICT BETWEEN STATES THAT LED TO A STALEMATE.

A constant back and fourth between different state courts led us to the point where we are now, at a stalemate. Indecisive.

Just when the matter was settled by the Highest Court of our country, the fire was reignited.

In 2020 It was raised that section 115 of Medical Healthcare Act 2017, directly came into conflict with the section 309 of Indian Penal Code. Which stated ;

'115. Presumption of severe stress in case of attempt to commit suicide. – (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proven otherwise, to have severe stress and shall not be tried and punished under the said Code.



The case of 'State of Maharashtra V. Maruti Sripati Dubal' (1986) 88 Bom LR 589

'Chenna Jagdeshwar V. State of Andhra Pradesh' (1988) cr LJ 549.



'P. Rathinam V. Union of India' (1994) 3 SCC 394

the case of 'Gian Kaur V. State of Punjab' (1996) 2 SCC 648.



In Conclusion.

A person in a white lab coat is holding a pair of golden scales of justice. The scales are balanced, and the person's hands are visible at the top, holding the central pillar. The background is a blurred image of a person's face, suggesting a medical or legal context.

So what do we do?

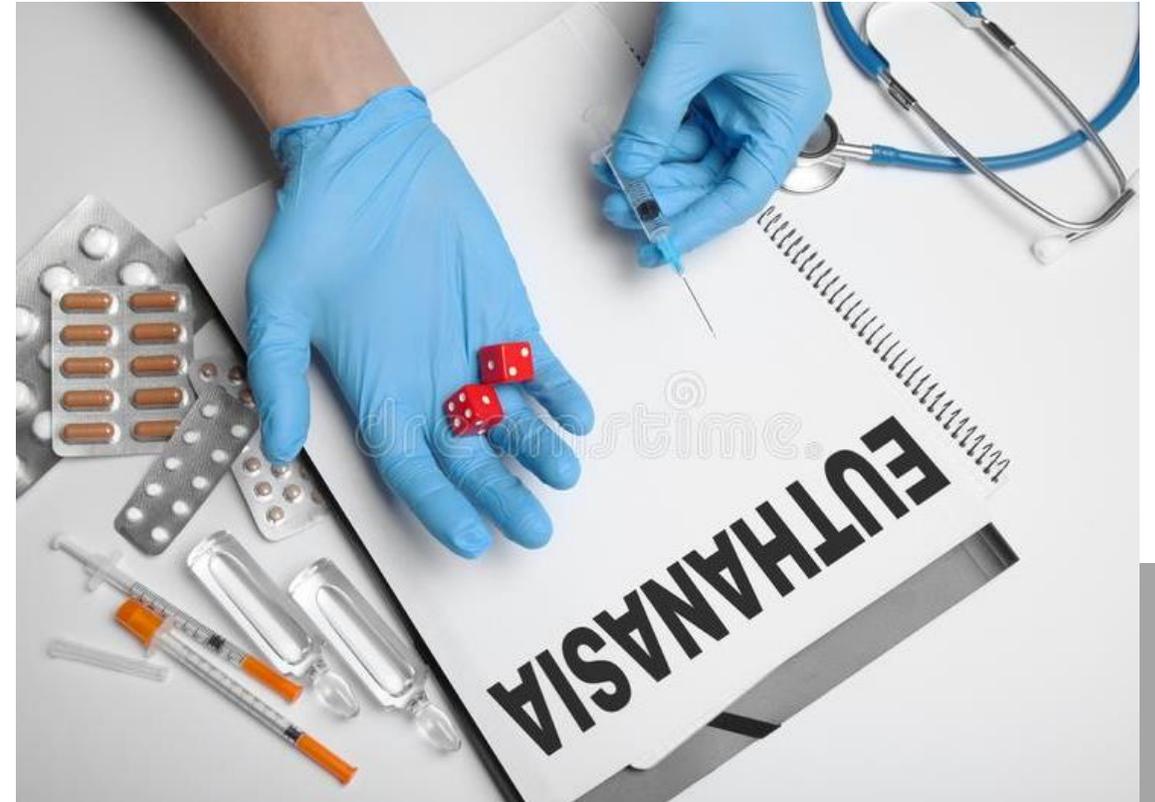
The reasonable response, or even moral, if we may say so, to such a situation is not to arrest the person, fine them or imprison them but to restrain them from making any hasty decisions and rehabilitate them. That is the entire purpose of Medical Healthcare Act i.e. to rehabilitate rather than apprehend. In our opinion, removal of section 309, IPC will not affect 306, IPC as apprehended and our intention, via this paper on this issue, is to propose a middle ground. Therefore, in our opinion, complete abolition of S. 309, IPC may be unwarranted, however, it may be essential to amend punishment granted for the same, from 'a year of imprisonment or fine; or both', changing it to 'compulsory medical treatment under governmental supervision' and 'compulsory social work for the betterment of the society' instead.

Thank you.

“the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in depression, and hence he needs help, rather than punishment.”



A Bench of Justices Markandey Katju and Gyan Sudha Misra commented though a Constitution Bench in Gian Kaur's case that's had held Section 309 IPC constitutionally valid,



**Thank
You**

