

309, IPC, 1860 has to be set aside and he will have to be convicted under that section.⁶⁸²

[s 309.4] The Mental Healthcare Act, 2017

Parliament has now enacted the Mental Healthcare Act, 2017 which vide section 115 lays down that:

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

(2) 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.

In view of the above provisions, if a person attempts to commit suicide, it shall be presumed, unless proved otherwise, that he has severe stress and he shall not be tried and punished under section 309 of the IPC, 1860. By inverting the presumption against guilt but retaining the provision in the statute book, attempt to suicide is still a criminal offence. In order to render conviction, prosecution will be required to lead evidence and prove that the survivor did not have severe stress and did not suffer any issue of mental health.

[s 309.5] Euthanasia.—

In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC, 1860. Physician assisted suicide is a crime under section 306 IPC, 1860 (abetment to suicide). The Constitution Bench in *Gian Kaur v State of Punjab*,⁶⁸³ held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*.⁶⁸⁴ The Court held that the right to life under Article 21 of the Constitution does not include the right to die. But in *Aruna Ramchandra Shanbaug v UOI*,⁶⁸⁵ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. The difference between 'active' and passive' euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. It is usually defined as withdrawing medical treatment with a deliberate intention to causing the patient's death. In *Common Cause (A Regd. Society) v UOI*,⁶⁸⁶ a five-judge Constitution Bench gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. The Supreme Court held that the right to die with dignity is a fundamental right.

[s 309.6] Procedure for passive euthanasia.—

Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support to an incompetent person of the kind above mentioned. When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of

three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives, e.g., parents, spouse, brothers/sisters, etc., of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.⁶⁸⁷.

[s 309.7] Abetment of attempt to commit Suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. The history of use of the provisions of section 309 shows that the section has been pressed into service primarily in the case of *Sati*, where the widow commits suicide and others have various reasons – economic and social, to abet such hapless woman to commit suicide. If a hapless *Sati* victim is goaded to commit suicide and the abettors abet her to jump into the funeral pyre of her husband, it would be preposterous for law to hold the abettors not guilty of any offence merely because she escapes or is saved from death later.⁶⁸⁸.

⁶⁶³. Subs. by Act 8 of 1882, section 7, for "and shall also be liable to fine".

⁶⁶⁴. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .

⁶⁶⁵. *Satvir Singh v State of Punjab*, (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 .

⁶⁶⁶. *Ramakka*, (1884) 8 Mad 5.

⁶⁶⁷. *Tayee*, (1883) Unrep Cr C 188.

⁶⁶⁸. *Dwarka Poonja*, (1912) 14 Bom LR 146 [LNIND 1912 BOM 6] .

⁶⁶⁹. *Dhirajia*, (1940) All 647 .

⁶⁷⁰. *Ram Sunder*, AIR 1962 All 262 [LNIND 1961 ALL 65] .

⁶⁷¹. *Phulabai*, 1976 Cr LJ 1519 (Bom).

⁶⁷². *Brij Bhusan Singh*, AIR 1946 PC 38 .

⁶⁷³. *Radharani*, 1981 Cr LJ 1705 (SC) : AIR 1981 SC 1776 (2) : 1981 (Supp) SCC 84. *Rukhmina Devi v State of UP*, 1989 Cr LJ 548 (All), mother locked herself up with her son after altercation with family. She killed the child and then attempted suicide. Convicted under this section and section 300 with a remark that because her husband had also rejected her and she was the victim of rage, her sentence might be remitted by the State. For a case in which the circumstances ruled out the possibility of suicide, see *Subedar Tewari v State of UP*, AIR 1989 SC

733 : 1989 Cr LJ 923 : 1989 (Supp) SCC 91. *Kavita v State of TN*, AIR 1998 SC 2473 [LNIND 1998 SC 642] : 1998 Cr LJ 3624 no proof that the woman threw her children into the well and then herself jumped into it to commit suicide. Conviction set aside. *Ram Kumar v State of Gujarat*, AIR 1998 SC 2732 [LNIND 1998 SC 772] : 1998 Cr LJ 4048 the deceased-woman and her accused husband were alone in the house. There was ligature mark on her neck. Her body was on a cot and not hanging. The court said that the theory of suicide became demolished and that of murder could be inferred. *State of Maharashtra v Maruti*; *State of UP v Sikandar Ali*, 1998 Cr LJ 2520 : AIR 1998 SC 1862 [LNIND 1998 SC 1231] double murder, conviction. Death penalty not warranted, life imprisonment. *State of HP v Jeet Singh*, AIR 1999 SC 1293 : 1999 Cr LJ 2025 , whether death was homicidal or suicidal, injuries found on both leg of the dead body on the basis of which the doctor stated that death might have been due to smothering. This opinion was formed without chemical examiner's report. The finding of the High Court that the deceased might have committed suicide was held liable to be set aside.

674. *Narendra v State of Rajasthan*, 2012 Cr LJ 723 (Raj); *Ujwala Sonyabapu Bhujade v State of Maharashtra*, 2011 Cr LJ 1791 (Bom)— offences under sections 302 and 309 IPC, 1860 not proved.

675. *CA Thomas Master v UOI*, 2000 Cr LJ 3729 (Ker).

676. *Ramamoorthy v State of TN*, 1992 Cr LJ 2074 (Mad). *Banwarilal Sharma v State of UP*, (1998) 3 SCC 604 : JT 1998 (4) SC 466 ; *Balamani v State*, 2010 (4) Ker LT 329 .

677. *Jagadeeswar v State of AP*, 1988 Cr LJ 549 approved and *Dubal v State of Maharashtra*, 1987 Cr LJ 743 overruled. The court also noted the distinction between suicide and euthanasia and section 306 and section 309.

678. *P Rathinam v UOI*, 1994 Cr LJ 1605 .

679. *Gian Kaur v State of Punjab*, 1994 Cr LJ 1660 (SC), the decision of Division Bench in *P Rathinam v UOI*, 1994 AIR SCW 1764 : (1994) 3 SCC 394 [LNIND 1994 SC 1533] : 1994 Cr LJ 1605 : AIR 1994 SC 1844 [LNIND 1994 SC 1533] overruled by Constitution Bench.

680. *Supra*.

681. *Supra*.

682. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

683. *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] .

684. *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] .

685. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

686. *Common Cause (A Regd. Society) v UOI*, LNIND 2018 SC 87 .

687. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

688. *Berin P Varghese v State of Kerala*, 2008 Cr LJ 1759 .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 310] Thug.

Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

COMMENT.—

This and the following section incorporate the provisions of the Thuggee Act of 1836.

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[s 311] Punishment.

Whoever is a thug shall be punished with ⁶⁸⁹[imprisonment for life], and shall also be liable to fine.

COMMENT.—

Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property, etc., are called thugs. Thugs are robbers and dacoits, but all robbers and dacoits are not thugs. Thugs committed robbery or dacoity or kidnapping are always accompanied with murder. Killing of the victim was the essential thing (still in MP & UP ravines).

⁶⁸⁹. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

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Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 312] Causing miscarriage.

Whoever voluntarily causes a woman with child¹ to miscarry, shall, if such miscarriage² be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child,³ shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

COMMENT.—

This section deals with the causing of miscarriage with the consent of the woman, while the next section deals with the causing of miscarriage without such consent.

The [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) provides for the termination of pregnancy by registered medical practitioners where its continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by a married woman or her husband, it would be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of a pregnancy by a person who is not a registered medical practitioner will be an offence under the [IPC, 1860](#), which to that extent is modified. It is high time that this section too was suitably amended in terms of [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) to include the various other grounds on account of which a pregnancy can now be terminated by registered medical practitioner. In this connection see also comment under section 91 *ante*. The [Medical Termination of Pregnancy Act, 1971](#) does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under [section 312 of the IPC, 1860](#) causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalising termination of pregnancy under certain circumstances. Since law is liberal for effecting such termination, the Act does not lay down any provision on husband's consent in any situation.^{690.}

1. 'With child' means pregnant, and it is not necessary to show that 'quickening', that is, perception by the mother of the movements of the foetus, has taken place or that the embryo has assumed a foetal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a

woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called foetus or child, it was held that the acquittal was bad in law.^{691.}

A woman quick with a child simply means a particular stage of pregnancy at which quickening takes place. It is a perception of the woman of the movement of foetus. Section 312 can even apply to a pregnant woman herself who causes her own miscarriage. Good faith by itself is not enough. It has to be good faith for the purpose of saving the life of the mother or the child and not otherwise. This observation of the High Court of Delhi occurs in a case^{692.} in which the doctor was found to be negligent and careless in injecting needles twice for performing abdominocentesis. The result was that the patient had to undergo forced abortion because septic developed. There was consent only for one insertion and that was not at all applicable to second insertion.

2. 'Miscarriage' is the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

[s 312.1] Death in attempt to terminate pregnancy.—

A woman had pregnancy of 24 weeks out of illicit relations and a doctor administered an injection for termination of the pregnancy but the woman died the next day without miscarriage. It was held that the act of the doctor amounted to 'voluntarily causing miscarriage' within the meaning of section 312 read with section 511, as the doctor was presumed to know the possible effects of the medicine.^{693.} Deceased, an unmarried girl was pregnant from accused, she died while causing miscarriage due to perforation of uterus following abortion. It is a clear case that accused was instrumental in causing the woman to miscarry and obviously it was not done in good faith for purpose of saving life of deceased. Miscarriage was with a view to wipe out evidence of deceased being pregnant. Accused liable to be convicted under [sections 312, 315, 316 and 201 of IPC, 1860](#).^{694.}

3. 'Quick with child'.—Quickening is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy.

^{690.} *Dr Mangla Dogra v AK Malhotra*, [AIR 2012 CC 1401](#) : [2012 \(3\) Ker LT \(SN\) 124](#) (P&H).

^{691.} *Ademma*, (1886) 9 Mad 369.

^{692.} *Meeru Bhatia Prasad v State*, [2002 Cr LJ 1674](#) (Del).

^{693.} *Akhil Kumar v State of MP*, [1992 Cr LJ 2029](#) (MP). *Mohamed Sharif v State of Orissa*, [1996 Cr LJ 2826](#) (Ori) termination under medical advice, death not caused, the accused not liable.

^{694.} *State of Maharashtra v Flora Santuno Kutino*, [2007 Cr LJ 2233](#) (Bom).

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Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 313] Causing miscarriage without woman's consent.

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with ⁶⁹⁵[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

Under this section the act should have been done without the consent of the woman. Under it the person procuring the abortion is alone punished; under section 312 such person as well as the woman who causes herself to miscarry are both punished. Where the accused woman kicked a pregnant woman in her abdomen resulting in miscarriage, her conviction under section 313 was sustained.⁶⁹⁶

[s 313.1] CASES.—

Section 313 would be attracted only if it is established that the pregnancy is terminated without the consent of the prosecutrix.⁶⁹⁷

⁶⁹⁵. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

⁶⁹⁶. *Tulsi Devi v State of UP*, [1996 Cr LJ 940](#) (All).

⁶⁹⁷. *Shantaram Krishna Karkhandis v State of Maharashtra*, [2007 Cr LJ 149](#) (Bom). See also *Pranab Kanti Sen v State of WB*, [2010 Cr LJ 162](#) (Cal).

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Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 314] Death caused by act done with intent to cause miscarriage—.

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

if act done without woman's consent.

And if the act is done without the consent of the woman, shall be punished either with ⁶⁹⁸[imprisonment for life], or with the punishment above mentioned.

Explanation.— It is not essential to this offence that the offender should know that the act is likely to cause death.

COMMENT.—

This section provides for the case where death occurs in causing miscarriage. The act of the accused must have been done with intent to cause the miscarriage of a woman with child.

[s 314.1] CASES.—

The son-in-law of a pregnant woman left her at the house of the accused doctor. Her dead body was recovered from the place where it was buried in the accused's house. It was in a decomposed state. The accused made extra-judicial confessions to three different persons to the effect that the death took place during abortion. Circumstantial evidence also proved this fact beyond reasonable doubt. His conviction under the section was confirmed as also the five-year RI sentence, but fine was set aside.⁶⁹⁹ A homeopath operated upon a pregnant woman to cause abortion but she died a few hours after operation because her uterus got perforated. His conviction under section 314 was upheld.⁷⁰⁰ A nurse attempted to cause miscarriage of a pregnant girl but was unsuccessful. On the third day another person, the accused, an attendant, made an attempt and succeeded but the condition of the girl became serious after five days. She was hospitalised and died of septicaemia which had developed from ruptures and tears in the internal parts of vagina. There was no evidence to show that ruptures and tears had occurred at the hands of the accused. It was held that his conviction under section 314 was not proper.⁷⁰¹

A person, named, C, was alleged to have had illicit relations with the deceased woman. He took her to a doctor for the purpose of aborting her pregnancy. The doctor caused

her death in that process. The doctor was not qualified for the purpose, nor his clinic was approved by the Government under the [Medical Termination of Pregnancy Act, 1971](#) and was also not having the basic facilities for abortion. There was a concurrent finding that the act was done by the doctor in furtherance of the common intention with C. It was held that the conviction of C under this section read with section 34 was proper.^{702.}

[s 314.2] Section 313 and Section 314.—

Ingredients for both these offences are contra-indicative and cannot go together. When conviction is recorded under section 304-A, it pre-supposes a negligent act, which would rule out any intentional act; whereas the conviction for offences under sections 313 and 314 can be founded only on intentional act of the accused and not negligence. Presence of *mens rea* would be sine qua non in such a situation. The trial Court, therefore, apparently erred in recording conviction of the appellants for offences punishable under sections 304-A and 313 and 314 of [IPC, 1860](#).^{703.}

^{698.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

^{699.} *Moideen Sab v State of Karnataka*, [1993 Cr LJ 1430](#) (Kant).

^{700.} *Jacob George v State of Kerala*, [1994 Cr LJ 3851](#) : (1994) 3 SCC 430 [[LNIND 1994 SC 417](#)] .

^{701.} *Vatchhalabai Maruti Kshirsagar v State of Maharashtra*, [1993 Cr LJ 702](#) (Bom).

^{702.} *Surendra Chauhan v State of MP*, [AIR 2000 SC 1436](#) [[LNIND 2000 SC 515](#)] : [2000 Cr LJ 1789](#) ; *Telenga Munda v State of Bihar*, [2001 Cr LJ 3094](#) (Pat), the pregnant girl was taken to a doctor who operated crudely causing rupture of big vessels resulting in death, abortion stick was also found in her internal part, the doctor did not inform police, direct nexus between his act and death, conviction of the doctor proper.

^{703.} *Mahesh Govindbhai Barot v State of Gujarat*, [2009 Cr LJ 3535](#) (Guj).