



# Employee self-harm and employer accountability: navigating the legal considerations and best practices

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## Introduction

Over the years, the incidence of workplace stress and anxiety has seen a significant increase in India. According to the report *Mapping India's Corporate Health and Wellness Landscape: A Comprehensive Overview*, issued by the Confederation of Indian Industry, in association with MediBuddy, 62 per cent of Indian workers are 'burning out at an alarming rate' and this number is significant both on a standalone basis and when compared to the global average of 20 per cent.<sup>[1]</sup> Further, data from India's National Crime Records Bureau reveals that in 2021, one-fourth of all suicides were among daily wage workers. Unfortunately, the number of reports of death by suicide in the formal employment sector suggests a disturbing pattern too and, what is worse, there appears to be no reliable database that can provide better numerical insight into the situation, so as to evoke an appropriate response and action from various stakeholders. The alarming statistics discussed above highlight a growing mental health crisis among the workforce, who find themselves navigating the dual challenge of meeting increasing workplace expectations, while striving to maintain a balance in regard to their personal lives.

This situation has not only underscored the urgent need for organisations to prioritise employee wellbeing but has also resulted in a growing number of

employers facing allegations and criminal proceedings in regard to the prevention of suicide. These cases highlight the significant legal and moral responsibility that employers bear in creating a supportive and healthy working environment.

This article delves into the legal framework surrounding workplace-related issues, with a specific focus on the proceedings initiated against employers under criminal law through an examination of the jurisprudence governing the determination of abetment of suicide.

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## The regime under Indian employment law

Indian employment law, characterised by a myriad of central and state laws, does not directly deal with cases of self-harm that may be attributable to events occurring in the workplace. The principal legislation dealing with workplace mishaps is the Employee's Compensation Act, 1923 (ECA), which concerns the payment of compensation to workers engaged in certain classes of establishments in the event of an 'accident' or 'occupational disease'. The ECA does not apply to all employees in the organised sector. Schedule II of the statute lists the kinds of employees who will benefit from the framework, such as employees employed in manufacturing operations and mines, although few states have extended the application of the ECA to employees working in commercial establishments.

Regardless of the limited application of the ECA, there has been limited jurisprudence on suicide as the basis for the granting of compensation under the ECA. However, a few courts have been inclined to take the view that the word 'accident' refers to a sudden or unforeseen event that does not occur by design and, therefore, suicide is not included in its ambit (see as a reference *Karnataka State Road Transport Corporation v Annapurna and Others*, MFA Number 31896/2010 (WC)).

This leaves us with criminal law in India, which deals with the concept of abetment of suicide, as discussed below.

## The regime under Indian criminal law

### Statutory provisions

Under Indian law, the offences related to an 'attempt at suicide' and the 'abetment of suicide' were previously governed by the Indian Penal Code, 1860 (IPC), which was repealed and replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS).

The abetment of suicide was addressed under section 306 of the IPC, which imposed criminal liability on any person who instigates, aids or abets another person to commit suicide. If found guilty, the offender could face imprisonment of up to ten years, along with a fine. Similarly, an attempt at suicide was criminalised under section 309 of the IPC, which prescribed simple imprisonment of up to one year and/or a fine for anyone who attempts to take their own life.

The BNS retains the provision regarding the abetment of suicide under section 108, which mirrors the language and intent of section 306 of the IPC. However, a significant change has been introduced concerning an attempt at suicide, which has been decriminalised under the BNS, marking a progressive shift from the earlier position under section 309 of the IPC.

In the subsequent paragraphs, we analyse how the courts, under the framework of the IPC, have interpreted and defined the scope of the abetment of suicide, especially in the context of the workplace.

### The judicial approach

Over the years, numerous cases have emerged where employees, in their suicide notes, have expressly mentioned the names of their colleagues or senior officials at their workplace, alleging that their actions or behaviour contributed to their unfortunate decision to take their own life. In other cases, family members of the deceased have raised allegations against individual's colleagues or superiors, attributing suicide to workplace-related pressure or misconduct by workplace officials. These cases often bring the spotlight on the role of the workplace in contributing to the employee's mental distress and their subsequent actions.

Such cases are frequently adjudicated in courts across the country and over the years have developed rigorous legal tests to determine whether the act of suicide was directly a result of abetment by the accused individuals. These tests are aimed at ensuring that the culpability of the

accused is not merely based on allegations, but is established through concrete evidence and a clear nexus between the accused's actions and the death of the deceased by suicide.

## The test of proximity

In cases involving the death of an employee by suicide, courts have consistently emphasised the necessity of establishing a direct nexus between the deceased's act of suicide and the accused's conduct, supported by material evidence rather than imaginary or inferential evidence (see as a reference *Madan Mohan Singh v State of Gujarat and Another*, Criminal Appeal No 1291 of 2008).

## The presence of mens rea

To attribute culpability to an employer for abetting an employee's suicide, the presence of *mens rea*, ie, criminal intent must be established. Without this essential element, the employer's actions cannot amount to incitement or abetment under section 306 of the IPC. The Delhi High Court in the case of *Dr G K Arora v State and Others*, Criminal Miscellaneous Case 5431 of 2014 and 5817 of 2024, observed that individuals in positions of authority, whether in the public or private sector, are often required to make decisions that may cause hardship to employees. However, in the absence of *mens rea*, such actions cannot be considered as incitement or abetment under section 306 of the IPC. The judgment underscores the importance of distinguishing between decisions made in the course of official duty and actions driven by malice or criminal intent.

## Establishing abetment under section 107 of the IPC

Furthermore, judicial precedent has clarified that an offence under section 306 of the IPC requires clear evidence of abetment for the commission of the crime. The parameters of 'abetment' are detailed under section 107 of the IPC, which inter alia specifies that a person abets an act by instigating another person to perform that act. To establish abetment, it must be shown that the accused's actions were intended to lead to suicide or that suicide was a foreseeable consequence of such actions. Courts discount hyper-sensitivity to routine workplace disputes, recognising that ordinary conflicts or disagreements are part of human interactions. In examining allegations of abetment, courts scrutinise evidence of the instigation or aiding suicide, giving due consideration to the deceased's mental state, including any suicide note or other materials (see as a reference *Ashok Kumar and Others v State and Another*, 2018 SCC Online Delhi 11591).

Further, the determination of 'instigation' depends on the circumstances of each case and varies on a case-to-case basis, as there is no universal formula to establish whether instigation has taken place. Even in cases where the accused allegedly used abusive language such as 'go and die', courts have held that such statements, without further evidence of intent or foreseeable consequences, do not constitute instigation, which would otherwise lead to an offence having been committed under section 306 of the IPC (see as a reference *Shivaji Shitole v State of Maharashtra*, Criminal Writ Petition Number 1113 of 2013).

## Other factors to be considered

Recently, the Supreme Court of India, in the case of *Nipun Aneja and Others v State of Uttar Pradesh*, Criminal Appeal Number 654 of 2017, laid down significant factors and tests to be considered when adjudicating cases involving the abetment of an employee's suicide under section 306 of the IPC. The court outlined specific requirements, supported by a few observations, that constitute the offence of the abetment of suicide. Among the requirements is a test to ascertain whether an employer/workplace has created a situation of unbearable harassment or torture, or where the individual was threatened with severe consequences (such as harm to their family or financial ruin), such that the individual deemed suicide as the only recourse.

Furthermore, in cases where the sole evidence presented before the court is a suicide note left by the deceased employee, and the note does not attribute any specific harm caused to the deceased by the actions of the accused, nor is any other factual foundation established against the accused, the courts have not ruled in favour of the charge of abetment (see as a reference *Neetai Dutta v State of West Bengal*, 2005 AIR SC 1775).

## Workplace best practices to contain instances of self-harm

Considering the discussion set out above, employers should assume a more active role in promoting employee wellbeing than merely reacting to situations where an adverse impact to an employee's mental health is brought to their notice. Best practices in the workplace could include collating regular feedback on workplace stressors or the existence of behaviour un conducive to employee wellbeing, facilitating the implementation and operation of employee-led resource groups, providing resources to employees to help them identify symptoms relating to a mental health issue, collaborating with external partners that are well-versed in mental health issues and related risk assessments, and developing a robust policy to deal with instances of harassment and retaliation.

Team leads, function heads and other members in middle-to-senior leadership roles should be taught to develop strong emotional intelligence and recognise signs of stress and other mental health issues in relation to employees and they should be advised that part of their responsibility is also to validate the concerns and experiences of those working with them and make efforts to navigate through difficult and/or time-sensitive business requirements in a manner that minimises further employee distress. Needless to say, to make this a two-way street, such workplace officials should also be provided with a forum to voice their concerns in regard to having sensitive and difficult conversations with employees rather than being merely advised to 'figure it out'.

Having said that, we are mindful that an employer cannot always be in a position to prevent self-harm/suicide, despite their best efforts. However, what matters is how the organisation as a whole learns from such unfortunate events. For instance, an employee suicide may warrant: (1) support provided to the family members of the deceased employee, while respecting their privacy and space to grieve; (2) internal and external communications that are not dismissive of the situation, but quell any rumours or misinformation, while demonstrating a willingness to reflect on the situation; and (3) the offer of psychological first aid to other employees, especially colleagues of the deceased employee or those who shared a personal rapport with the individual, backed by adjustments to their work schedule, given the natural impact on one's productivity in distressing moments.

## Concluding remarks

The present article, while demonstrating the limited statutory framework on employers' responsibilities in regard to unfortunate situations involving the infliction of harm to the self by an employee, provides food for thought in regard to modern workplaces that must not only accommodate, but be driven by, workforce wellbeing instead of a singular focus on productivity in the conventional sense. This involves investing in a robust policy framework, workforce and leadership sensitisation, external healthcare/medical support for the workforce, and constant monitoring and feedback mechanism that lends achievement of business/productivity milestones to also cover wellbeing as an attribute of professional growth.

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<https://campaign.medibuddy.in/medibuddy-cii-report/> last accessed on 27 January 2025.