DECRIMINALIZATION OF ATTEMPT TO COMMIT SUICIDE: PROPOSED AMENDMENT TO S. 309 OF THE INDIAN PENAL CODE

By *Matthew Kurian*[112]

"Do you ask what path leads to liberty? I answer, any vein in your body."

Seneca, On Anger

"It is ironic that Section 309 of the Indian Penal Code still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one's own life would have escaped human punishment if he had succeeded but is to be bounded by the police, because attempt has failed."

Rajinder Sachar, J.

State v. Sanjay Kumar Bhatia

Introduction

The maxim "A tooth for a tooth, an eye for an eye, a life for a life" embodied the lex talionis; legitimate retaliation, the promise of swift and terrible punishment, the vengeance of God and King upon those who transgressed the law and committed offences. It and the enforcement of which being the only methods known to the State for maintaining public order, peace, and tranquility.

An attempt to commit a crime is a direct movement towards the commission of said offence; an act done with the intent to commit the crime, forming part of a series of acts which would constitute its actual commission if it were not interrupted. An intended but unfinished crime. Such attempt, a real and present threat to body and property, an infringement of the Right to Security, as much a danger to the legally protected interests as a completed crime, constitutes in itself, a harm that the penal law seeks to punish, and are classed among inchoate offences, wherein a person becomes culpable simply for the manifestation of his intention to commit the prohibited act, a crime committed by doing an act, with the purpose of effecting some other offence.

[112] 2nd Year B.A., LL.B (Hons.) Student, NALSAR University of Law, Hyderabad

In India, the attempt to commit suicide, the wilful and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish the result of self-destruction, is criminal vide Section 309 of the Indian Penal Code , which makes liable for simple imprisonment a/o fine, any person who attempts to commit suicide, and does any act towards the commission of such offence, thus creating a paradox in the Law of Attempt, for while a failed attempt here attracts penal sanction, the completed act cannot be an offence, which must be so to constitute a criminal attempt.

If a person has the right to live, the question is whether he has the right not to live. A substantial part of that argument would devolve upon the imbrication of the positive and negative aspects inherent in the Fundamental Rights, This paper seeks to study the evolution of this law as it stands in India, to challenge its legal validity and to establish that such a law is inherently barbaric and patently unconstitutional, an anachronism unworthy of a humane society as ours, and to recommend reforms to the same.

Historical Evolution of the Law Governing Suicide

Suicide (felo de se), is deliberate termination of one's own physical existence or self-murder, wherein an individual of age of discretion and compos mentis voluntarily kills himself, as opposed to euthanasia or mercy killing, which requires the active agency of another.

Reference to the jurisprudence of this subject is not intended, principally because the same is beyond the scope of the paper, and also because in euthanasia, a third person is either actively or passively involved, who aids or abets the death of another. It is proposed that an attempt of a person to take his life be distinguished from action of some others to bring to an end the life of a third person. Such a distinction can be made on principle and is conceptually permissible. In ancient India, The Laws of Manu permitted suicide under certain circumstances;

" Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to rest.
A Brahmana, having got rid of his body by one of those modes practiced by the great sages, is exalted in the world of Brahman, free from sorrow and fear."

to which Max Müller notes that a voluntary death by starvation was considered an appropriate conclusion of a hermit's life.

Contemporarily, while suicide without State approval was frowned upon in Athens, and warranted a separate burial, it was deemed to be an acceptable way of dealing with military defeat; while in Rome, what prohibitions existed, did so merely for economic reasons, and "patriotic suicide", one guided by reason and honour, was celebrated as a virtuous death.

In general, it may be said that the Hellenic world had a relaxed attitude towards suicide, one that continued well into the Christian church until the Council of Arles in 452 A.D., where, drawing upon the teachings of Augustine of Hippo, suicide came to be seen as morally wrong, as the work of the devil. This stance was affirmed by later scholars and theologians, until finally, by the early sixth century, not only was successful suicide an ecclesiastical crime, but so was an attempt at suicide even though unsuccessful, which was punished by excommunication and civil consequences although no passage in scripture unequivocally declares suicide as wrong. This view remained prevalent throughout the western world until 1684, when the first noteworthy defence of suicide was made by John Donne, an Anglican priest who argued that it need not be deemed sinful. This dichotomy was much challenged over the following century, with David Hume and Immanuel Kant arising as notable proponents and opponents respectively.

In the latter half of the twentieth century there was a decline of traditional religion and a rise of individualism in Europe, creating an open-minded society whose views on suicide began to diverge from the Christian view. At the turn of the millennium, the prevalent view was that just as everyone has the right to live so do they have the right to die, hence there was an acceptance of the right of an individual to commit suicide; As observed by an English writer, *"It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whon life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation."* the law governing which was accordingly abrogated by the Suicide Act of 1961, while retaining the criminality of abetment to suicide.

The Law of Suicide in India

"Attempt to commit suicide – 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."

The Law Commission, in its 42nd Report on the Indian Penal Code (June, 1971) had considered the validity of the above-mentioned S.309 and had concluded that it, being harsh and unreasonable, ought to be repealed, and a Bill to this effect, so amending the IPC, had been tabled in Parliament in 1972. That Bill, however, lapsed, and no further attempts were made to revive it.

Since then, however, significant and conflicting opinions from various High Courts and the Supreme Court have marked this journey through the Indian legal system, a comprehensive analysis of which is indispensable to a thorough understanding of the jurisprudence of the Right to Die.

State v. Sanjay Kumar Bhatia

While the irony of S.309 continuing to remain upon our statutes was dwelt upon, as was the decadence and injustice of social pretentions that sustained it, the Court did not however, here see fit to deal with the constitutional validity of the provision.

Sachar. J., speaking for the division bench of the Delhi High Court, expressed his disappointment that society, which should have been overcome with shame in the knowledge that its youth were being driven to suicide, was compounding its inadequacy by imposing criminal prosecution and sanction upon them. It was held that while the challenge of the social strains of a modern, urban, and competitive economy had to be met by humane, civilized and socially oriented treatment, such ruthless suppression of its symptoms could only result in failure.

Maruti Shripathi Dubal v. State of Maharashtra

The question of the constitutionality of S.309 first arose here, before a division bench of the Bombay High Court, the defense contending that besides such punishment being barbaric,

cruel, irrational, and self-defeating, it stood violative of Articles 14 and 21 of the Indian Constitution.

Art.14.

"Equality before law – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Art.21.

"Protection of life and personal liberty – No person shall be deprived of his life or presonal liberty, except according to procedure established by law."

The Court here relied upon Sunil Batra v. Delhi Administration, and Munn v. Illinois to enhance the scope of Art. 21 beyond mere animal existence, and upon Olga Tellis v. BMC, and R.C.Cooper v. Union of India to establish that all Fundamental Rights, being but extensions of the Right to Life, have to be read together and are subject to each other, making that which is true of one, true for all.

Thus, drawing upon the Freedom not to speak and the Freedom to remain silent, inherent in Art. 19(1)(a), or the Freedom not to do any business or occupation in Art.19(1)(g), the court read a positive right into the negative language in which Art.21 is couched, recognizing the individual's Right not to live, or the Right not to be forced to live, or, positively recognizing the individual's Right to Die.

The court then addressed S. 309 in terms of Art. 14 and lamented the fact that Suicide had not been defined in the IPC, the result of which being that it, by merit of bringing an individual closer to death than to life, constituted a felony and was penalized as such.

Finally, the court took notice of the various causes which lead people to commit suicide, mental diseases and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel or unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one's honour or a sheer loss of interest in life or disenchantment with it, or a sense of fulfilment of the purpose for which one was born with

nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment.

The court thus concluded that the Section, by virtue of being arbitrary and for want of a clear definition, besides treating all attempts as alike without regard to the circumstances, was violative of the Right to Equality, and hence, unconstitutional.

Chenna Jagadeeshwar & Anr. v. State of Andhra Pradesh

The Court here dwelt upon the ruling of the Maharashtra High Court in Maruti Shripathi Dubal, and observed that unless an individual was assured of physical existence, the other Fundamental Rights would be meaningless, and that no Constitution could ignore its citizens' Right to Life, which made it difficult to read the Right to Die into the Right To Life.

Since S.309 only mandated the upper limit for the punishment, whereas Sections 3, 4, and 13 of the Probation of Offenders Act conferred wide discretionary powers upon the Court, either to bind him to psychiatric care, or to release him with an admonition, while S. 12 of the Act enables the Court to ensure that no stigma or disqualification should attach to such a person, the Court maintained that an unfair law may be made fair in application by the Court.

The Court also hinted at the untenabillity of S.306 of the IPC that criminalizes abetment to suicide in the absence of S.309, thus enabling those people who actively assist a/o induce people to commit suicide to go scot free.

While conceding that a society that regards the living conditions of distressed persons with nonchalance cannot honorably punish them at self-deliverance, that it remains a paradox that society will neither provide sustenance, nor allow the sufferer to die, the Court saw wisdom in retaining this discretion, to exercise and temper its judgment with humanity and compassion, with itself, once more re-affirming the validity of S.309.

P. Rathinam v. Union of India

The constitutionality of this section first came into question before the Supreme Court in this case. B.L. Hansaria, J., as he was then, dismissed the challenge of Article 14, as had been affirmed by the Maharashtra High Court in Maruti Shripathi Dubal, on the grounds that, even

if each case of suicide were unique which could be addressed by appropriate tailoring of the judgement, the ultimate object of all remained the same, i.e. Intentional taking of one's life.

On the challenge of Art. 21, the Court concurred that the Fundamental Rights contained within them, both positive and negative rights, and relied upon its own judgements in Dilipkumar Raghavendranath, and Umed Ram Sharma to appreciate the fact that "life" connoted more than mere animal existence

In its analysis of the positive right sheathed in the negative language of Art.21, the court considered the criticism of the Maruti Shripathi Dubal judgement of Shri. B. B. Pande, and of Shri. Faizan Mustafa, who have argued that it is an outcome of a superficial reading of the freedoms, ignoring the inherent differences between them, that the negative and positive aspects of the Right to Life inherently annul each other, which is unlike the suspension of the right in other cases, that the Right to Life stood apart from other rights, in so far as they were all extensions of it.

While acknowledging that the Right to Die might not be inferable from analogy to Art.19, Art.21 being unique and distinct, the court here delved into the social dynamics of criminal law, the functional theory of sentencing, and the therapeutic reach of the punitive arts, to bring social sciences relevant to criminal justice and prison jurisprudence in harmony with constitutional roots, to hold that one may refuse to live, if his life be not worth living, or if the richness and fullness of life were not to demand living further, upholding a person's right not to be forced to enjoy right to life to his detriment, disadvantage or disliking, and so held S.309 void vide its violation of Art.21, as much to bring Indian Criminal Law in tune with the "global wavelength", as much as to further the cause of humanity, promoting globalization, and not merely humanization, and again decriminalized the attempt to commit suicide.

Smt. Gian Kaur v. State of Punjab

The question of the constitutionality of the Right to Die finally arose before a constitutional bench of the Supreme Court in this case, where the appellants maintained that since the attempt to commit suicide was unconstitutional (S.309 having been struck down in P. Rathinam), the abetment of suicide (S.306) must be unconstitutional as well, contending that since the Right to Die had been recognised as a fundamental right, assisting in the enforcement of the same could not be penalised.

The court, re-examining its earlier judgement in Rathinam, remarked that in other rights, a negative right was read into the positive language of the statute, contrary to what happened here; that certain overt acts had to be performed in the commission of suicide which could not enhance life in any manner; that any aspect of life which might enrich it may be read into it, but that which extinguishes it, being inconsistent with the continued existence of life, just as death was inconsistent with life,, could not; that the right to die with dignity was not to be confused with the right to die.

With regard to euthanasia, the court held that, to a dying man, when death due to termination of natural life is certain and imminent, and the process of natural death has commenced, a premature extiction of his life would not so much be extinguishing, as accelerating it, thereby holding that this argument of permitting suicide to reduce the period of suffering during the process of natural death could not be availed to interpret Art.21, thereby concluding that Art.21 did not contain within it the Right to Die.

Against the challenge of Art.14, the court concurred with the decision in Rathinam, the Probation of Offenders Act, 1958, and the Code of Criminal Procedure, 1973, to hold S.309 not violative of either Art.14 or 21 of the Constitution, and to thus refute the argument that S.309 of the IPC was constitutionally invalid.

With regard to the challenge to S.306 that had been the essence of this immediate case, the court held that, since S. 309 had been dealt with extensively, no significant challenge to the constitutional validity of S.306 remained, and that it constituted a distinct offence, capable of existence independent of S.309, ruling that even where the punishment for attempt to commit suicide may not be desirable, the abetment of the same could be made a penal offence, in the interest of society, as much as to prevent the danger inherent in its absence.

Conclusion

From this, we can conclude that the jurisprudence of suicide, the fine conjunction of the individual's Right to Life, his Responsibility to his family, State, and society, and finally, the Duty of the State, as parens patriæ, to protect him against harm, has been savagely contested since time immemorial, with discordant yet persuasive arguments raised either way, mutually exclusive yet simultaneously legitimate.

In our immediate case, the dichotomy chiefly revolves around the Fundamental Rights, Articles 14 and 21 of the Constitution, that it is cruel, barbaric, and irrational, against notions of morality and public welfare. Today, however, we can safely say that this matter is not so much res integra as it had been when Sanjay Kumar Bhatia, was ruled upon. The underlying principles have evolved much in the thirty years since past, as has society around it, and what are laws but a reflection of the volatile society around it?

In this regard, it would also be necessary to note that the Law Commission, pursuant to the decision in Gian Kaur, in its 156th Report on the IPC, in August, 1997, had recommended the retention of S.309, and had subsequently reversed this stance in October 2008 vide its Report 210 on the Decriminalization and Humanization of Suicide, whereby it recommended the effacing of the above-mentioned section from the statutes.

The historical tryst between Law and Suicide reveals to us the abject reality that this is not a condition of modern society alone, and global statistics establish that it is not confined to the Indian context alone either. In a scenario where close to 800,000 people commit suicide each year, nearly a sixth of which happen in India, it would truly be cruel and barbaric to consign an individual to prison, not for wishing to end his suffering, real or imagined, but for his sheer ineptitude of method that caused him to fail.

The question of the Right to Die arises here. Is it the natural outgrowth of, the positive meaning embedded in the negative language, of Art.21? Such recognition raises significant problems, for if it be so, S.306 could not stand, being but assistance in the enforcement of a Fundamental Right, yet that one may actively promote the demise of another, besides being open to much misuse, seems irrational and immoral.

It is here necessary to arrive at a consensus between these conflicting notions, and it is therefore proposed that the statute criminalizing attempts to commit suicide, being irrational, insofar as that a successful attempt could not be penalized; inhuman, by forcing an individual who is already under so much distress as to long for death to undergo criminal prosecution, amounting even to double jeopardy; and cruel, by forcing one to continue a life that no longer holds meaning, one that may not be called human, warrants expurgation from the statutes, but not by merit of being a violation of Article 21, for if it were, the case for abetment to suicide, would be much strengthened, the issues with which have already been noted above.

Suicides are symptomic of a troubled and distressed mind, and such individuals require help and care, not prosecution and imprisonment. While the Right to Die is not a Fundamental Right in itself, the seeking of death need not be deemed criminal either, for, as Schopenhauer said, when we punish an attempt to.

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