



**CULPABILITY OF ATTEMPT TO COMMIT
SUICIDE – A LEGAL LABYRINTH
AMIDST ETHICAL QUANDARY**

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‘MAN IS born free; and everywhere he is in chains.’¹ This could not be truer than on the point that often a person is not allowed to take his own life. There is a perceptible tension between individual freedom and authority of the state ever since the time men organized themselves politically and formed state. There are certain pertinent questions which need to be raised and answered – has a person control over his life? If yes, what is the extent of such control? What are the legally and morally acceptable grounds for curtailing man’s freedom? What is the status of an individual in the society? Is one’s life his private domain? What constitutes ‘culpability’ in an act? What social interest is served by holding one liable for ‘attempt to commit suicide’? Does society come to peace by holding such a ‘failed’ person liable for punishment? The present paper attempts to address these issues as also few others such as, man’s multi-faceted connection with the society, and the agreeable conception of social interest in order to sketch a reasonably holistic picture on these issues. In the course of discussion focus will be on the two celebrated cases — *P. Rathinam v. UOI*² and *Gian Kaur v. State of Punjab*³ both decided by the Supreme Court.

“I take it that no man is educated who has never dallied with the thought of suicide”, wrote the famous founder of modern psychology William James.⁴ Despite all the advances made by man, suicide remains one of the biggest social menaces of the 20th century.⁵ As Albert Camus has put it — there is but one truly serious philosophical problem and that is suicide.⁶ The intriguing issue of suicide has caught the

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1. Rousseau, *The Social Contract*, (Ch-I) cited in Clarence Morris (ed.), *The Great Legal Philosophers* 215 (1971).

2. (1994) 3 SCC 394.

3. (1996) 2 SCC 648.

4. Cited in Donald McCormick, *The Unseen Killer – A Study of Suicide, Its History, Causes and Cure* 9 (1964).

5. *Ibid.*

6. III *Encyclopedia of Ethics* 1668 (2nd edn.).



imagination of thinkers in all the ages. According to Aristotle 'suicide is wrong because it is 'cowardly' and 'treats the state unjustly'.⁷ As per Immanuel Kant 'the wrongness of suicide is a specimen of the moral conclusions the categorical imperative could demonstrate.'⁸ That suicide is an ethical and legal issue has been admitted in the well known "Philosophers' Brief" given by Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Thomas Scanlon and Judith Jarvis.⁹ These jurists have stated that the issue is, 'whether it is ethically appropriate to hasten one's own death or to ask others to do?' Thus, suicide is an issue that is quite close to ethics and morality. The issue gets further intrigued when one comes to know that 'although the suicide rate in some countries is declining, in the US it remains high, virtually equaling the homicide rate each year.'¹⁰

There is no dearth of converse views as well. Friedrich Nietzsche has insisted that, 'suicide is man's right and privilege.'¹¹ However, the moral issue related to suicide got subsumed into the strong social and psychological interpretations given by Emile Durkheim and Sigmund Freud in the 19th century. Nevertheless, the ethical issues, which presuppose choice, re-emerged only in the later part of the 20th century and continue with full force into the 21st.¹² From eulogy (like *hara-kiri* in Japan and *sati* in India) to condemnation (in the Dahomey tribe of Africa it is viewed as a crime because a person's life belongs to the king¹³) the act of suicide is found on both the extremes of ethical scale.

Fenichel¹⁴ while discussing suicide/attempted suicide has said that the most frequent causes of suicide are 'an ambivalent dependence on a sadistic superego and the necessity to get rid of an unbearable guilt tension at any cost.' All self-killings are not categorized as suicide to bring it within the realm of ethical and legal problem. In fact "we exhibit a greater willingness to categorize self-killings intended to avoid one's just deserts as suicide than self-killings intended to benefit others."¹⁵ An attempted suicide, however, does not always fall squarely

7. *Id.* at 1669.

8. Kant cited in *ibid.*

9. See *State of Washington v. Harold Gluckesberg* 521 US 702 (1997), available at <http://supct.law.cornell.edu/supct/html>. (accessed on 15-3-07).

10. 4 *Encyclopedia of Crime and Justice* 1546 (2nd edn.).

11. Cited in *supra* note 6 at 1669.

12. *Id.* at 1670.

13. IV *Encyclopedia of Criminology and Deviant Behaviour* 510 (2001).

14. Cited in M.A.Weiss, "The Gamble with Death in Attempted Suicides" in Anthony Giddens (ed.), *The Sociology of Suicide* 384 (1971).

15. Beauchamp and Children cited at <http://plato.stanford.edu/entries/suicide>. (accessed on 22-2-07).



within the category of a 'failed suicide' *i.e.* a genuine effort to kill himself gone awry. Rather, a suicide attempt refers to a set of intentional self-harm carried out with the awareness that the result could be fatal but there is no fatal outcome.¹⁶ Attempted suicides are, thus, on a different footing; they are much more numerous than suicides and the groups differ in several aspects from each other, and only a small proportion of the former enters into the latter group.¹⁷ In the large majority of cases one fails in his purpose because the person is either too well or too ill or not sincere or determined enough to kill himself.¹⁸ Suicide has the following four elements/ingredients:¹⁹

First - it involves the death of at least one person

Second - death results either from action/inaction

Third - it involves the clear intent to cause one's own death

Fourth - a victim who causes his own death.

In fact, 'in each man there is a 'biological self', derived from the body and a 'spiritual self' or 'soul', derived from, leading to, and being the repository of 'society'; the 'body' and the 'soul' of the individual were inevitably in conflict in the sense that each opposed (at least, potentially) the other...'²⁰ Such duality of human behaviour and composition make the acts of suicide/attempts quite fascinating, and often shrouded in mystery. The constant tussle between the 'self' and the 'society' is the background in which the subject should be studied.

The present paper would try to dig through few layers related to those aspects of suicide, and the attempted ones, where the cause is socio-psychological arising out of desperation, depression, desolation etc. The issue of euthanasia deserves a full and separate treatment, which is beyond the scope of the present paper. 'Suicide', as a problem, is more out of the socio-psychological reasons arising out of sufferings and, therefore, the cases like Socrates' drinking the hemlock are outside the purview of the present paper. 'Suicide' is a subject worthy of philosophical investigation in its own right; it is source of insight for various philosophical sub-disciplines: morality, psychology, ethical theory, social and political philosophy, the metaphysics of personhood, free will and action theory.²¹

16. *Supra* note 13 at 496.

17. E. Stengel, "The Social Effects of Attempted Suicides" *supra* note 14 at 376.

18. *Ibid.*

19. Mayo cited in *supra* note 13 at 426.

20. Durkheim cited in Jack D. Douglas, *The Social Meanings of Suicide* 343 (1967).

21. *Supra* note 15.



Ethics, law and liberty – The symbiosis

Suicide and the attempted suicides necessarily involve a discussion of law *vis a vis* ethics and morality. Law, as we know, is fundamentally concerned with the issue ‘as to how should we ‘live’ together?’ It is only when we decide and live together that the forces of law, morals, customs etc. start acting upon us. ‘Survival’, therefore, is the ultimate common goal; and hence both law and morality should have certain minimum moral content ‘in the absence of which men, as they are, would have no reason for obeying voluntarily any rules; and without a minimum cooperation given voluntarily, coercion of others who would not voluntarily conform would be impossible.’²² An act/attempt of suicide, which shakes the chord of ‘survival instinct’ of the society and often vigorously, therefore, needs the attention of both law and morality. The precepts of law and morality are intertwined and have been so since ages. Although, law and morality are distinguishable it remains true that morality is in some way an integral part of law or legal development; ‘morality is secreted in the interstices of the legal system, and to that extent it is inseparable from it.’²³

In view of the above, both law and morality need to ‘function’ for the growth and development of the society and its members. Neither can afford to weaken the collective ‘survival-interest’. ‘It is the tacit assumption that the proper end of human activity is survival, and this rests on the simple contingent fact that most men most of the time wish to continue in existence.’²⁴ An act of suicide demands serious attention because there is nothing a normal person dreads more than his own death, and that dread in the vast majority of cases, is as rational as it is unavoidable, for unless we continue to live, we have no chance whatever of achieving goals that are the grounds of our ultimate interests.²⁵ Hence, what hurts the collective interest and the collective morality needs to be addressed by both — the law and the morals.

An important question comes to the fore here — is it morally permissible to punish for immoral acts even though apparently un-harmful to others in a conventional sense? The answer seems to be ‘yes’. ‘The suppression of vice is as much the law’s business as the suppression of subversive activities; it is no more possible to define a sphere of private morality than it is to define one of private subversive

22. H.L.A. Hart, *The Concept of Law* 193 (2nd edn. 2005).

23. Lloyd and Freeman, *Lloyd’s Introduction to Jurisprudence* 64 (5th edn. 1985).

24. *Supra* note 22 at 191.

25. Joel Feinberg, “Harm and Self Interest” in P.M.S. Hacker and J. Raz (eds.), *Law, Morality and Society* 300 (1977).



activity.’²⁶ It may rightly be said that it is important in the area of criminal law, which governs conduct that the society’s notion of what is the law and what is right should coincide.²⁷ Society tends to look down upon the acts that are uncommon or unnatural; this attitude is reflected in laws regardless of the fact that those acts bring any particular harm or not.

It is a tribute to the perseverance of human societies that they have survived and evolved as culturally²⁸ collective entities till date. This would not have been possible without a grand common behavioural pattern across them. ‘The systematic observations of constancies among all known cultures make it highly probable that the kinds of cultural behaviour found in all of them have been an integral part of their survival system up to the present time; and the categories of justified and unjustified killing remain for all known societies.’²⁹

The theories of natural law accentuate the notions of universality of certain patterns of permitted and prohibited behaviour. “It is purely inductive statement of certain minimum conditions we cannot do without if life is to be decent”, wrote Laski to Holmes.³⁰ The culling out of such minimum conditions of life from the amorphous and often transient corpus of moral values is the law’s concern. In fact, in the all theories of natural law it was assumed that the process of moral discovery is a social process and there is a collaborative manifestation of the shared purposes by which men realise their ends and decipher their meanings more clearly.

A staunch individualist like J.S. Mill is against any such imposition of morality because, to him, the individual’s own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him because in the opinion of others to do so would be wise or even right.³¹ However, to a naturalist like Immanuel Kant, “To annihilate the subject of morality in one’s person is to root out the existence of morality itself from the world as far as one can, even though morality is an end unto itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one’s person.”³² For him, our rational

26. Lord Devlin cited in Basil Mitchel, *Law, Morality and Religion in a Secular Society* 7 (1967).

27. K.N.C. Pillai, “Comment on *P. Rathinam v. UOI*”. (1995) 3 SCC (Jour.) 2.

28. ‘Culture’ could be defined as ‘that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.’

29. Margaret Mead cited in *supra* note 23 at 227.

30. *Ibid.*.

31. See H.L.A. Hart, *Law, Liberty and Morality* 4 (1963).

32. *Supra* note 15.



morality is the repository of our moral duty. John Locke too has categorically proscribed the act of self-annihilation and said, “Though God bestowed upon us our natural personal liberty, that liberty does not include the liberty to destroy oneself.”³³ The trump of right over utility perhaps ceases to exist here; therefore, there may be grounds justifying legal coercion of the individual other than prevention of harm to others, says Hart.³⁴

The ethical conception of ‘Body’

If we consider our body being ‘owned’ by us, then this right could extend only to its ‘usury’ benefits *i.e.* to use and enjoy; to own it absolutely, like a ‘chattel’, a right of ‘alienation’ has to be established. It is important to point out here that ‘what enables us to own ordinary material items is their metaphysical distinctness from us, and even under the most dualistic views of human nature, ourselves are not sufficiently distinct from our bodies to make ownership of the body by the self a plausible notion.’³⁵ ‘Indeed, the fact that certain ways of treating ordinary property are not available to us as ways of treating our bodies (we can’t *give away or sell our bodies in any literal sense*) suggests that self-ownership may only be a metaphor meant to capture a deeper moral relationship.’³⁶ Law should, therefore, come in between the individual and his attempt to commit suicide, which has also been the view of Plato who called it an act of cowardice or laziness undertaken by the individuals too delicate to manage life’s vicissitudes.³⁷

‘Happiness’ as a right

One of the cherished targets of enjoyment of right is one’s pursuit of happiness. However, it is not a blanket right and surely not without a purpose, because ‘to say of someone that he seeks happiness does not, it seems, imply that he is prepared either to violate or to affirm these restrictions (constraints of right and justice). Therefore, the acceptance of these limits should be made explicit; the pursuit of happiness often suggests the pursuit of certain sorts of ends e.g. life, liberty and one’s own welfare.’³⁸ To find welfare in causing death of one’s own entity can be the maxim of a ‘suicide club’ and none else.

33. *Ibid.*

34. *Supra* note 31 at 5.

35. *Supra* note 15.

36. *Ibid.*

37. *Ibid.*

38. John Rawls, *A Theory of Justice* 550 (2005).



Destruction is, more often than not, antithetic to any welfare and hence, law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate³⁹ because law and morality are never divorced from the general welfare.

Society is essentially a creator of ideals and few of them transform into law; the others remain in the moral domain and still regulate. The complex problem of transforming the moral norms into legal ones often arises more pronounced in a multi-cultural, multi-religious society. However, where conflict exists, moral values are to be preferred to economic and economic to aesthetic.⁴⁰ The society is right in enforcing its shared morality and it is morally correct to do so. After all, 'if liberty is a social conception there can be no liberty without social restraint...(and) in the absence of restraints enforced on or accepted by all members of a society, the liberty of some must involve the oppression of others.'⁴¹ However, only such liberties are there for picking, which are convertible into development or growth. Destruction has never been a purpose of the conferred freedoms — legal or moral.

Freedom to choose one's own fate, as a 'liberty right', needs restraints when such freedom tends to transcend the realm of thought into the realm of action. 'Thought and speech in certain contexts may be equivalent to acts and when this boundary is reached, we reach the limit of immunity.'⁴² The domain of such restraints expands with time. 'As experience of the social effects of action ripens and the social conscience is awakened, the conception of injury is widened and insight into its cause is deepened. The area of restraint is, therefore, widened.'⁴³

The choice of a well-informed person, though held as an object of maximum possible respect, is nevertheless, the result of one's 'desire' moulded by his perception and experience culminating in knowledge. As a biopsychic entity, man's freedom to choose is not the product of purely 'deductive reasoning' rather 'volition' guided by his own reasons, which Kant calls as 'pure reason'. Thus, knowledge is not, and should not be, the sole bedrock of one's freedom to choose. What one chooses should also be regulated and guided by a general maxim of action, capable of sustaining and promoting the collective existence.

Freedom to choose, therefore, cannot be a trump over general utility; it can merely be a demand being put forth before the society for its 'consideration'. Mill concedes that to have a right is to have something that society ought to defend him in the possession of and if the objector

39. Benjamin N. Cardozo, *The Paradoxes of Legal Science* 37 (1928).

40. *Id.* at 57.

41. Hobhouse cited in *id.* at 95.

42. *Id.* at 112.

43. *Id.* at 119.



asks why it ought (to do so) he can give him no other reason than general utility.⁴⁴ Similarly, Isaiah Berlin has said, “There are sometimes things more important than liberty and hence at times coercion on liberty is legitimate as a practical compromise”.⁴⁵

Legal position in India

The statutory provision on ‘attempt to commit suicide’ is under section 309 of the Indian Penal Code, which lays down as under:

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.

Section 309 of IPC is an example of offence that makes an attempt to commit certain specific offence, a specific offence.⁴⁶ Analytically, therefore, ‘attempt’ under section 309 is about committing an offence (*i.e.* suicide) – albeit abortively. The term ‘such offence’ in section 309, at times, has led to confusion as to whether it indicates ‘attempt’ or ‘to commit suicide’ as an offence. *Halsbury’s Law*, as quoted above, makes it clear, and rightly so, that ‘attempt’ under section 309 of IPC is about committing a specific offence *i.e.* ‘committing suicide’. Moreover, like other inchoate offences, ‘attempt’ is an offence only if the act attempted itself is a substantive offence. The fact that ‘suicide’ *per se* is not dubbed as an offence is purely because of the impossibility of the prosecution of the successful perpetrator! That ‘to aid’ and ‘abet’ suicide too is an offence (section 306 of IPC) further strengthens the point that to ‘commit suicide’ is itself an offence.

The two historic cases

In India, the case law relating to attempt to commit suicide has converged on the issue of ‘right to die’ and the constitutionality of section 309 of IPC. The two rather back-to-back cases *viz. P. Rathinam v. UOI*⁴⁷ and *Gian Kaur v. State of Punjab*⁴⁸ have delved into the various aspects of suicide, the socio-psychological factors and the similar issues. Another important case on this issue has been *Maruti Sripati Dubal v. State of Maharashtra*⁴⁹ which has been referred to

44. See H.L.A.. Hart, *Essays in Jurisprudence and Philosophy*. 188 (1983).

45. Available at <http://lrdoc.free.fr/page3/part1.htm>. (accessed on 8-3-07).

46. 5(1) *Halsbury’s Laws of India* 215.

47. *Supra* note 2.

48. *Supra* note 3.

49. (1986) Bom LR Vol. 88, 589.



quite frequently in the above two cases on one point or the other.

In the *Rathinam* case, the Supreme Court declared section 309 as unconstitutional and held 'right to die' as a necessary concomitant of 'right to life' under article 21 of the Constitution. The court observed, "We state that right to live of which Article 21 speaks of, can be said to bring in its trail the right not to live a 'forced life'."⁵⁰ The court summarized its findings as under: - ⁵¹

We state that the section 309 deserves to be effaced from the statute book to humanize our penal laws. It is a cruel irrational provision, and it may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then, an act of suicide can't be said to be against religion, morality or public policy and act of attempted suicide has no baneful effect on society. Further, suicide or attempt to commit it causes no harm to others because of which states' interference with the personal liberty of the persons concerned is not called for. We, therefore, hold that section 309 violates Article 21, and so, it is void. May it be said that the view taken by us would advance not only the cause of humanization, which is a need of the day, but of globalization also, as by effacing section 309, we would be altering this part of our criminal law to the global wavelength.

The court went on to say that the desire for communion with God may very rightly lead even a very healthy mind to think that he would forego his right to live and would rather choose not to live.⁵² Rajinder Sachar J, almost a decade ago, had echoed similar sentiments in *State (Delhi) v. Sanjay Kr. Bhatia*⁵³ where he observed, "Law under section 309 of IPC is an anachronism unworthy of a humane society and the accused being 'social misfits' call for medical treatment not the legal one." In both the cases, the courts have acceded to a non-legal, or at least a non-criminal, nature of the act of attempt to commit suicide.

The court in *Gian Kaur* revisited the issue but restricted it to the constitutionality of section 309. It kept itself away from the desirability of the section in the statute book as being inhuman, archaic in nature. The court, in substance, held that the right to live is not the other side of the right to die, and hence cannot be treated on the lines of the 'right to speak' that includes 'right to be silent'. It has been held that 'right to life' is 'positive in nature' and death puts an end to the very

50. *P. Rathinam*, *supra* note 2 at 410.

51. *Id.* at 429.

52. *Id.* at 410.

53. (1985) Cri LJ 931 (Del).



repository of all rights *i.e.* 'life'. Moreover, 'right not to speak' is one way of exercising the 'right to speak' because one merely suspends his right for sometime and may revoke it at any later time. This is not the case with 'right to die.' In *Gian Kaur* it was also held that the imposition of punishment under section 309 is not violative of article 14 of the Constitution.⁵⁴

It is submitted that the Supreme Court has taken a very narrow and superficial view of 'life'(in *Rathinam*), almost of a mechanical existence as if it were a 'switch on-switch off' kind of a thing. The *mahaprasthanam* ('the great departure'), which the court mentioned, could be the cherished goal of certain sects, but it cannot be made as a justification, in one stroke, for legalizing the 'right to die' and making the act of attempt a non-culpable one. However, it may be open for debate as to whether the members of such sects should be given the 'right to commit suicide' who claim that such type of 'death' is an essential component of their religious belief. Moreover, such interpretation of law places a higher normative value to the religious order compared to the legal one.

Further, section 309 merely ordains for simple imprisonment up to one year with full discretion to the court as far as sentencing is concerned. In *Mt. Barkat v. Emperor*⁵⁵ the Lahore High Court has held long back that the court must in each case consider the motive, which had prompted a person to destroy his or her life. In fact 'the unfortunate person deserves indulgence and should either be released on probation of good conduct or sentenced to a fine if he is not too poor.⁵⁶ The sentencing part and the criminal procedure, therefore, should not blur the issue of 'culpability' that stands on a totally different footing.

In its 42nd Report (1971), the Law Commission of India had recommended that the penal provision (section 309 of IPC) is a harsh one, and is unjustifiable and, therefore, it should be repealed.⁵⁷

Position in UK and US

Suicide was a felony in common law punishable by forfeiture of goods and chattels and called for ignominious burial of the body in the highway.⁵⁸ However, it was not until the Suicide Act, 1961 was passed in England that suicide and attempted suicides were no longer crimes

54. AIR 1996 SC 946 at 954.

55. AIR 1934 Lah. 514.

56. RatanLal and DhirajLal, *Indian Penal Code* 1508 (2005).

57. Law Commission of India, *42nd Report : Indian Penal Code*, paras. 16: 31 to 16:33 (1971).

58. 83 *Corpus Juris Secundum* 782.



though complicity in another's suicide remained a felony.⁵⁹ In *Curzon v. Missouri*⁶⁰ the US Supreme Court has observed that 'the choice between life and death is a deeply personal decision of obvious and overwhelming finality.' After *State of Washington v. Harold Gluckesberg*⁶¹ the law in the US has certainly moved towards non-culpability of 'attempt to commit suicide'.

Nature and nuances of suicide and attempted suicide

Suicide is something more than self-sought or self-inflicted death. It is a species of crime or wickedness, something wrong, a kind of a self-murder.⁶² Suicide and attempted suicide have revealed fascinating dimensions and there is more than what meets the eyes. A fairer understanding of these myriad facets of the otherwise mysterious event — which leaves no successful protagonist for interview (!) — would help us fixing the act on the proper side of law. It is high time that the reasons behind holding it culpable (or otherwise), or legalizing the 'right to die' should again face a reality check.

As has been well analysed by P. Weiss, "No entity can lose a character by virtue of a reflexive act which presupposes the presence of that character. It is thus incorrect to speak of a man taking his own life; one should rather speak of his putting himself in a state so that his life can be taken from him. By itself (a living being) forms a closed system. It cannot by an act of its own produce the Relative Nothing which is its negation."⁶³ It seems to mean that one basically puts himself into a danger, and death follows as a consequence. To that extent he is the responsible person and there lies the culpability of the act. The role of his volition is more of creating the 'threat' or 'hazard' to his own life; that one can take his own life is a psychic impossibility, as revealed above. Whether such 'volition' is necessarily a product of mental misbalance? What is the state of mind while attempting it? These are few issues for further analysis.

"From a phenomenological perspective which takes seriously the accounts of adolescent suicides and suicide attempts, one can only conclude that suicide and suicide attempts result from a conscious rational choice."⁶⁴ When the adolescent suicides do not reveal that kind of impulsiveness, normally associated with them, such act could, therefore, not usually be a result of unconscious, irrational decision of

59. *Supra* note 13 at 511.

60. 497 US 261, 281 (1990) cited in *supra* note 9.

61. 521 US 702 (1997).

62. *Supra* note 58.

63. P. Weiss cited in *supra* note 20 at 356.

64. Jerry Jacobs, *Adolescent Suicide* 1 (1971).



the more 'mature' men or women. Psychiatrist Robert E. Litman observed, "Investigations in suicide death reveal that, in great majority of cases, suicide did not occur suddenly, impulsively, unpredictably or inevitably, but was, on the contrary, the final step or outcome of a progressive failure of adaptation."⁶⁵ Hence, while empathizing with the perpetrator one need not get impulsive, because the actor himself is hardly impulsive most of the time!

It is a common perception that almost all the acts of suicides/ attempts are the result of depression. However, 'a great number of suicide patients do not manifest the clinical features or classical psychodynamics associated with depression...[It] is the fact that many depressed patients are just not suicidal.'⁶⁶ To the contrary, the act is more an act of aggression', 'a gesture'. In fact, 'in quite a number of cases suicide attempt is merely a ruse and it is held out as threat with ulterior motive of bringing pressure upon the other man and get things done according to one's desire.'⁶⁷ To unleash such kind of negative energy, a coercive force, is unacceptable in any civilized society. Psychiatrists, psychologists, sociologists and men with cultural wisdom have long realized that suicidal actions are frequently 'acts of aggression' though it may seem bizarre.⁶⁸

James M.A. Weiss,⁶⁹ on the basis of suicides' anticipation of death, has analysed that comparatively small number are certain that they will die ('aborted successful suicide'), substantial numbers who are uncertain of death ('true suicidal attempt') and other persons, whose number is small among reported attempted suicides but is probably much larger among successful attempted suicides, who are certain that they would die ('suicide gestures'). Although the action ('suicide gesture') is performed in a manner that other persons might interpret as suicidal in purpose, the attempter often takes considerable precaution. In the above analysis, the 2nd and 3rd category combined show that the bulk of the attempts is motivated beyond self-destruction and deeper is the motive less is the successful suicides. Hence, it should be noteworthy that most of the attempts fall in not so innocent category of 'self-punishment' but something else.

Attempted acts of suicide also tend to realign social equations because of the powerful force unleashed by it. "To those close to him, it (suicide attempt) often stands for bereavement and, therefore, gives

65. *Id.* at 20-21.

66. Herbert Hendin, "The Psychodynamics of Suicide" *supra* note 14 at 321.

67. J.G. Kanabar, "Should there be right it to commit Suicide" (1993) *Cri LJ* 15.

68. *Supra* note 20 at 275.

69. *Supra* note 14 at 390-91.



rise to mental reactions identical to mourning.”⁷⁰ Such state of mourning, thus, tends to iron out many ruffled social relations, and often permanently so. Where it was possible to relate changes in human relations directly to the suicide attempt the following *sequelae* were found: changes *vis a vis* a special person, usually resulting in mutual concession and an improvement of crumbling relationships.⁷¹ Such realignment of social relations is a result of the symbolism manifested by such ‘attempts’. In fact, the term suicide is actually descriptive of actions rather than intention itself, some people undoubtedly commit suicide by ‘accident’ *i.e.* as a result of a suicidal gesture that miscarried.⁷² If failed, they are usually dubbed as attempts. It is quite natural that on a failed accidental – suicidal event, one may not admit so out of shame and embarrassment finding him nowhere; but the fact that such an act is both calculative and purposive to the core that makes it closer to be ‘culpable’ on the footing of ‘coercion’. So much so, said Jenson and Petty, that those committing dangerous acts against themselves very frequently intend a specific alter to save them.⁷³

Attempted suicides are also the result of an act of a protracted nature giving time to others to save him. He also exhibits his decision to ‘end’ his life if the concerned does not care for him. The classic example is the case study in the tribe of ‘Tikopia’ by Raymond Firth. There, ‘the insulted man paddles out on a canoe in the deep reaches of ocean; when his absence is noted, search party too paddles out to find; if they find him he lives on’⁷⁴ or else he dies. Should such attempts be protected and let go unquestioned? Man is not an island in himself; hence, whatever causes serious ruffles should not be legally permitted.

Attempt, though mostly calculative, is often not repeated; perhaps because the mission gets accomplished in the first attempt itself. In St. Louis, out of 109 patients who attempted suicide in 1952 and 1953, eight months later only two had committed suicide successfully. Similarly, in London (1949) out of 72 only 2 committed suicide after three years; in Sweden out of 230 people who attempted only 6% had killed themselves after four years.⁷⁵ Such is the transitory nature of the felt ‘reason’ to die that only a very small number of them repeat it otherwise, nothing stops an attempter to bid again at the first given opportunity. It is repeated usually when one fails to see the desired impact. If hopelessness were the prime factor, more prisoners would

70. *Supra* note 17 at 382.

71. *Id.* at 379.

72. *Supra* note 20 at 361.

73. *Id.* at 362.

74. Maurice L. Farber, *Theory of Suicide* 8 (1977).

75. *Supra* note 14 at 388.



have attempted in the Nazi concentration camps! However, there the suicide attempts were extremely rare though suicide by giving up the struggle or by self-exposure to certain death were common.⁷⁶

Suicide is, therefore, a statement towards nihilism and an act of decisive destruction leaving no point of return. "Suicide shows a contempt for society. It is rude. As Kant says, it is an insult to humanity in oneself. This most individualistic of all actions disturbs society profoundly. Seeing a man not caring for the things, which it (society) prizes, society is compelled to question all it has thought desirable. Society is troubled and its natural and nervous reaction is to condemn the suicide. Thus, it bolsters up again its own values."⁷⁷ If suicide is capable of being morally rightful and legally colourless, it may be an arguable possibility that the provision of agreeable means of suicide may be perceived as a necessary social service! A French writer Binet-Sangle has actually gone as far as this.⁷⁸

Suicide, in view of the preceding paragraphs, does not appear to be a socially or legally neutral event; the people attempting it ought to stand for scrutiny. Its culpability does not seem to be an exception to any of the acclaimed precepts of the substantive criminal law.

Attempt to commit suicide – in the zone of culpability

"It is felt that attempt to commit suicide is a crime belonging to a genre that signifies societal disapproval of an act against sanctity of human life. We have a strong feeling that there is an intrinsic value in human life, irrespective of whether value in human life, irrespective of whether it is valuable to the person concerned or indeed anyone else."⁷⁹ Why such an importance is attached to 'life' *per se*, and why does the act of 'attempt' attracts, or should attract, the social disapprobation and thereby calling for legal intervention, will be analyzed in the coming paragraphs.

Following are the three major lines of arguments usually advanced in favour of 'attempt to commit suicide' to the extent of claiming it as a constitutional 'right to die.'

- First - Self-killing causes 'harm' to none,
- Second - One 'owns' his life, almost like a property, and
- Third - 'Right to die' is the other side of 'right to life'.

76. *Supra* note 17 at 382.

77. Fedden cited in Glanville Williams, *The Sanctity of Life and The Criminal Law* 240 (1958).

78. *Ibid.*

79. *Supra* note 27.

*Legal concept of 'harm'*

The concept of 'harm' is neither static nor uni-dimensional. It evolves with the social evolution and, with time, it touches the upper reaches of cognition. "As experience of the social effects of action ripens and social conscience is awakened, the conception of injury is widened and insight into its causes is deepened. The area of restraint is, therefore, widened."⁸⁰ The legal rules normally take into account the rights of all those closely concerned, including the dependents, and recognize their share of claim over the individual's self because he lives in a society and has obligations towards others. In the inner core is his obligation towards his immediate family.⁸¹ Even Hansaria J, in *Rathinam* has admitted, "Adverse sociological effects are caused by the death of the concerned person, and not by the one who had tried to commit suicide."⁸² This observation admits two things: firstly, that suicidal death causes adverse effect. This brings 'suicide' within the realm of negativity and closer to an act of culpability. Mukherjee J⁸³ referring to sections 306 and 309 of IPC, has held that 'it may very well be said that Penal Code does forbid suicide.' Secondly, 'attempt' causes no such harm. How is it that an attempt to cause a harmful effect be let off? Isn't 'attempt' punishable in modern criminal law, for doing an act that itself is a specific wrong? K.N. Chandrasekharan Pillai has rightly asserted, "If they have taken such a decision (for suicide) they should face the society and receive the condemnation either in terms of punishment or treatment."⁸⁴ To hold an act as 'culpable' is an end unto itself for the modern criminal law.

Conception of life as 'property'

In *Maruti Dubal* case the Bombay High Court observed that 'one's life, one's body, with all its limbs, is certainly one's property and he is the sole master of it.'⁸⁵ Can there be such a capitalistic notion of 'life' or such distorted dichotomization of the human entity? This materialistic outlook about life treats everything, including human body, organs and even emotions, as a form of commodity and such a view of human life is violative of the constitutional guarantee under articles 23 and 24 of

80. Hobhouse cited in *supra* note 39.

81 B.D. Ahmad, "Organ Transplant and the Right to Die" 7 *Islamic and Comp. Law Qly.* 127 (1987).

82. Siva, "Right to Commit Suicide – Sociological Perspective", 1997 (3) SCJ 39.

83. *Purabi v. Vasudeb*, AIR 1969 Cal. 293 at 299.

84. *Supra* note 27 at 4.

85. *Maruti S. Dubal v. State*, (1986) Bom LR 589 at 599.



the Constitution.⁸⁶ One's life may be his property, but there are limits to use to which he can put anything and own, and one may not destroy what is his and thereby destroy or seriously harm what does not belong to him.⁸⁷

At this point analyses of legal 'conception' of 'mischief' under section 425 of IPC, may be worthwhile which prohibits anyone from causing wrongful loss or damage to someone by causing destruction of any property. Explanation [2] to the section clarifies that a 'mischief' may be committed by an act affecting property belonging to the person who commits the act. The underlying principle to this provision is that ownership of property is not absolute. The right of ownership may include right of alienation but not destruction because it is not in the interest of the society. After all, one becomes 'owner' of a thing merely by a legal conveyance *viz.* sale, gift, inheritance etc. which gives him the right to alienate or dispose, but not to destroy the same. To 'use' and 'enjoy' are essential individual interests for giving someone a full meaning to his life, and the society cherishes the same to a great extent. 'Destruction', it is submitted, demands power of 'creation' *i.e.*, bringing forth something out of 'nothing' and it is a disparate conception *vis a vis* 'discovery' or 'invention'. Man, at the most, procreates. However, even such procreation does not confer any right upon the parents to cause 'harm' to their 'product' (e.g. 'destroying' the foetus). The dominion over oneself is a natural fact, and not a result of any legal conveyance so as to 'dispose' of one's 'life' at will. An individual has only a kind of 'usury' rights over his body/self. To 'kill' oneself is not akin to 'alienate' but to 'destroy'; it does not change hands, rather it ceases to exist. That is why Kant has called suicide as wrong because it destroys the subject of morality and thereby debases the humanity.

One, therefore, has a kind of a limited dominion over his life, through his body and mind, vested in him as a trust on behalf of the society. Hegel has put it beautifully – 'Have I a right to take my life? The answer will be that I, as this individual, am not master of my life, because life as the comprehensive sum of my activity, is nothing external to personality, which itself is this immediate personality. Thus, when a person is said to have a right over his life, the words are contradiction, because they mean that a person has a right over himself. But he has no such right, since he does not stand over himself and he cannot make judgment on himself. Hence, for an unqualified right to suicide, we must simply say that there is no such thing even for

⁸⁶ B.B. Pande, "Creating A Right To Die- An Exercise In Futility" 7 *Islamic and Comp. Law Qly.* 118 (1987).

⁸⁷ Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* 247 (1980).



heroes'.⁸⁸ Law should not be a party to such nihilistic conception of life that treats it as a mere chattel.

The 'right to die'

One's 'right to die' is usually seen as a part of his 'right to life'; often seen as the other side of 'right to life', say, right to silence, right not to move etc. The dual moorings of the conception of 'right to die' are often seen as:

First - 'suicide' as a liberty right *i.e.* where 'X' has 'no duty not to commit suicide', and

Second - 'suicide' as a 'claim right' where others are morally obliged not to interfere with X's suicidal behaviour.

The culpability of the attempt to commit suicide hinges primarily on the notion that 'X' has a duty not to commit suicide and society is the claim holder.

The view supporting 'right to die' is that only the 'holder' has the right to determine his fate since no one else has the right to take his life. But, is it a cogent and jurisprudentially plausible argument? 'I think no, since others are morally prohibited from killing me it does not follow that anyone else, including myself, is permitted to kill me. This conclusion is made stronger if the right to life is inalienable, since in order for me to kill myself, I must first renounce my inalienable right to life, which I cannot do.'⁸⁹

The Supreme Court, in more than one case, has held that fundamental rights (FRs) are inalienable and they cannot be waived. In *Basheshar Nath v. I.T. Commissioner*⁹⁰ it held that a person could waive none of the FRs because the Constitution makes no distinction between FRs enacted for the benefit of an individual (e.g. article 21) and those enacted in public interest on grounds of public policy (e.g. articles 17, 23 and 24). In *Olga Tellis v. Bombay Municipal Corporation*⁹¹ the court asserted that 'the high purpose which the Constitution seeks to achieve by enforcement of Fundamental Rights is not only to benefit the individual but to secure the larger interests of the community.' Nothing is more fundamental than one's right to life and obviously is least capable of being waived by anyone. "All men are endowed by their creator with certain inalienable rights, that among these are life..."⁹²

88. *Supra* note 82 at 49-50.

89. *Supra* note 15.

90. AIR 1958 SC 149.

91. AIR 1986 SC 180 at 192-93.

92. Thomas Jefferson cited in *supra* note 87 at 219.



Ironically, in the US, the forerunner of FR movement, it can now be waived.⁹³

'Right to die' is inevitably linked with its non-culpability. The recognition of 'right to die' — a necessary consequence of its non-culpability — may also have negative implications for the state inasmuch as the state may be obliged to deploy resource to counter breach of peace and social alarm associated with the exercise of the 'right to die'.⁹⁴ In fact, the 'right to die' is a movement in reverse direction. It will not only create confusion in the 'right to life' movement but may ultimately absolve the state from any kind of obligation to provide the life enhancing conditions.⁹⁵

Hence, the stretching of 'right to life' to include 'right to die' under article 21 is inherently antithetical to the fullest realization of life. While the 'right to life' is being expanded to include even claims like basic education, housing etc., it cannot be so interpreted to let it implode into nothingness by recognizing 'death' as the mere other side of the 'life'. Any act that disrupts the flow of life, let alone stops it altogether, should be condemned and prohibited.

Jurisprudential analysis of 'culpability' of attempt to suicide

"To be a wrong or a crime an act need not be, nor even be believed to be harmful to anyone or to society in any sense other than it runs counter to the common morality at points where its sentiments are strong and precise."⁹⁶ Further, punishment is a passionate reaction of graduated intensity to offences against collective conscience.⁹⁷ There is no denying the fact that an attempted suicide tends to attack upon the very survival instinct of men and belittles and distorts the concept of 'life' itself. "We could not subtract the general wish to live and leave intact concepts like danger and safety, harm and benefit, need and function, disease and health...We are committed to it (survival) as something presupposed by the term of discussion, for our concern is with social arrangements for continued existence, not with those of a 'suicide club'."⁹⁸ Any intentional killing, except by procedure established by law, is to be checked; and we have evolved our systems on these very lines. Hence, state has a constitutionally legitimate interest in protecting individuals from irrational, ill informed, pressured or unstable

93. M.P. Jain, *Indian Constitutional Law* 854 (2006).

94. B.B. Pande, "Right to Life or Death? For Bharat Both Cannot be 'Right' ". (1994) 4 SCC (*Jour.*) 24.

95. *Id.* at 22.

96. Durkheim cited in *supra* note 44 at 254.

97. *Id.* at 255.

98. *Supra* note 22 at 192.



decision to hasten their own death;⁹⁹ and the best protection starts from calling the act wrong and actionable in law.

Criminal law is a 'categorical imperative', and the individual's 'free will', though at the core of ethics and justice, has to pass the objective test of the 'categorical imperative'. "The freedom of the act of volitional choice is its independence of being determined by sensuous impulses or stimuli; the will is the capability of pure reason to be practical of itself. But this is not possible otherwise than by the maxim of every action being subjected to the condition of being practicable as a universal law."¹⁰⁰ The 'idea', which dictates one's volition, is the product of his 'pure reason', and hence one has to be answerable for his act. Therefore, 'volition', in order to become law must be practicably transformable into a universal law. Can a 'suicidal act' be practicable like that? Definitely not, because it would then be the law of only a 'suicide club'! Can there be near universal reasons for committing suicide? Perhaps not, because except in the cases of euthanasia or, possibly, to escape from physical pain like torture etc., rest of the reasons are the mental constructs of each individual, which are different from 'pain'. Its tolerability, which has some measurable gradation, is independent of emotion and 'suffering'. The pain referred to as 'suffering' – fear, grief, anxiety or despair – is to be explained as an emotion. Pain, the sensation, is typically, but not always associated with damage, has felt location; 'suffering' does not relate to the nervous system, as does the sensation of pain.¹⁰¹ Further, all persons whose body structure is healthy, have approximately the same capacity for perceiving pain; and there are approximately 21 distinguishable increments of intensity between threshold pain (barely perceptible) and pain of maximal intensity.¹⁰² Hence, there could be a case for exception to avoid unbearable kind of pain. The present paper being focused on the attempted suicides out of sufferings, desolation etc. is unable to go any further into the cases of suicide to escape 'pain'.

In view of the above, an attempt to commit suicide out of suffering needs to be treated as culpable and the criminal law cannot overlook the same. 'The modern welfare state would be failing in its duty of paternal care to its citizen by striking down a law, which would deter its citizens from rushing to the presence of the Creator unmasked.'¹⁰³ Penalising for not wearing a helmet, and a general acceptance of this

99. *Supra* note 9.

100. Kant cited in Julius Stone, *Province and Function of Law* 242 (2000).

101. *Supra* note 6 at 1270.

102. 17 *Encyclopedia Britannica* 35.

103. Sheeraz L.A. Khan, "Right to Die - A note on the SC Judgment" 37 *Civil and Military Law Journal* 240 (2001).



rule, is indicative of the *in loco parentis* role of the state. To admonish and even punish for an 'attempt to commit suicide' is a logical extension of such welfare laws made in the general interest. Indifference on the part of the state to the extent of recognizing 'right to die,' it is apprehended, may lead to a distorted polity.

A problem to ponder upon

What happens if 'X', while attempting to kill himself, ends up killing 'Y' (say, by jumping over him accidentally or in rescuing 'X')? If the initial act of 'X' is innocent i.e. if his 'attempt' is not culpable then why should he be responsible for a sheer accidental death? However, 'under the theory of transferred intent, where the intent to take one's own life is transferred to the taking of another's life',¹⁰⁴ one is liable for murder. How weird the situation would look if one comes to think of it as a mere mechanical transfer of guilt. If the initial intention to 'kill' is not held as culpable, on what juristic ground can the guilt be transferred? It is submitted that the reasons for transferring the 'guilt intent' are two-fold- *firstly* - life of every person is considered equally valuable worthy of preserving and protecting, and – *secondly* - taking away that 'life' criminally, is independent of the result of the *actus reus* i.e. the final victim is inconsequential to the criminal liability.

Would anyone feel like saving a man from dying in a suicidal attempt if the rescuer comes to know that the perpetrator is legally innocent, and that latter's injury are legally not recognized?

Conclusion

The most dangerous thing is when violence meets with success, because success secures to legitimize violence.¹⁰⁵ Attempt to commit suicide too is a form of violence, committed on one's own self, and hence letting it off as non-criminal act may go down as a wrong notion of right and wrong, harm and benefit etc. One should not condone the act of suicide because of it being too fraught with the danger of not remaining an aberration to but becoming a part of the social fabric one day to become Frankenstein and to tear it asunder.¹⁰⁶

Suicide, and its attempt, are acts of desperation, which are coolly calculated and exercised as volition, unless one is under mental illness,

104. *Supra* note 10 at 547.

105. Kant cited in Robert S. Summers, *Law its Nature, Functions And Limits* 533 (2nd edn. 1972).

106. Nandan Dasgupta, "Decriminalizing Suicide" in Kusum (ed.), *Suicide: Some Reflections* 50 (1995).



and exhibits his notion of life and damn to all else. Moreover, if the state can be saddled only with negative duty, will the duty of non-interference with the liberty of terminating own life not also affect the state's legal power to prohibit the lower degree self-effacing activities such as smoking, alcoholism and drug-taking? This will substantially alter the individual-state relationship and impose serious limitations on the deployment of penal laws in the future.¹⁰⁷

One's own notion of success or failure, the concept of life, liberty and happiness cannot be extended to reach the point of no return. That 32 people per day commit suicide in Kerala,¹⁰⁸ and how many may be attempting is anybody's guess, is an indicator of the self-imposed burden of 'achievement' imploding into death unleashing a good deal of negative energy in the family and the society at large.

Advocates of the 'right to die', led by of Nietzsche and J.S. Mill and their ilk, are the ones who say that the individual hedonistic calculus of self-interest, where others are not affected (read 'harm'), is an end unto itself, and subject to no external control. However, 'harm', as discussed in the preceding discussion, is not a wooden concept. With social evolution, this concept too could be read broadly with the ever-expanding notion of 'life'. Further, 'suicide would be morally forbidden because a general adherence to the rule prohibiting suicide produces better consequence than would general adherence to a rule permitting suicide.'¹⁰⁹ It is like the general rule that theft, on any ground, is punishable albeit of a token amount; such a rule against theft too seems to bring better consequences than could be otherwise.

It is often said, in support of decriminalizing attempt to suicide, that though the 'means' to achieve death may be unnatural e.g. hanging, poisoning etc. the 'will' is not so. It is submitted that such a desire may be deemed natural if it is to avert pain or illness related with unbearable pain. But if the desire to die due to 'suffering' is termed natural then each one of us is living an 'unnatural' life by braving through such sufferings! Hence, it would be a criminal wrong to dub the vitality of life as 'unnatural' and an escapist act as a 'natural' one and therefore permissible. It would be a horrendous way of looking at life and liberty. Moreover, the averment that the 'means' to attain death could be unnatural, instead of desire, is also fraught with false perception of reality. What are the natural ways of dying? Events like accidents, choking, falling from height etc. are hazards of our collective existence, and few among many other modes of causing death. Our effort through

107. *Supra* note 94 at 25.

108. Details available at <http://www.rediff.com/news/2004/apr/15spec.htm>. (accessed on 26-3-07).

109. *Supra* note 15.



law and the moral forces has always been to delay, defer and, if possible, defeat (!) an imminent death. Death is death and no one is legally allowed to hasten it, no matter how it (death) approaches. Even a negligent treatment of illness, and thereby hastening death, is a criminal wrong though death could still be due to illness. Culpability lies in the 'human factor' involved in the course of action leading to death. Curbing the propagation and even consumption of tobacco, drugs etc. are basically precursor to the 'suicide law' that condemns suicide.

The institution of law has a strong teaching effect as well. It is usually taken as an evidence of righteousness imposed by the right-minded people at the helm of the affairs. Decriminalization of 'attempt to commit suicide' would only help in inculcating the suicidal tendencies as an acceptable behavioural pattern. Law helps in percolating down the notion of good and bad through generations; it helps as an additional moral force because it is morally desirable to abide by law. Any contrary treatment by law would tend to melt down the man's otherwise steely will to live and push him further towards death, even on seemingly feeble grounds. Kant has rightly said, "If adversity and hopeless sorrow have completely taken away the relish for life; if the unfortunate one, strong in mind, indignant at his fate rather than desponding or dejected, wishes for death, and yet preserves his life without loving it – not from inclination or fear, but from duty – then his maxim has a moral worth."¹¹⁰ Arguably, to preserve the core moral worth in a social order is one of the important functions of the criminal law; the brittleness of the 'will to live' is often less an act to empathize with, rather to condemn it as a matter of rule.

To conclude, law as an institution needs to act and condemn an act of suicidal attempt being a collective reflection of a politically organized society; after all, law acts as a seal of approval on the quivering moral sentiments embedded in the collective existence and fixes what have hitherto been the transient ones. Law, as a guide for an organised life, should preach all its followers, in the words of Albert Camus, that, 'suicide tempts us with promise of an illusory freedom from absurdity of our existence, but it is in the end an abdication of our responsibility to confront or embrace that absurdity head on.'¹¹¹

"You ever gentle god, take my breath from me;
Let not my worser spirit tempt me again,
To die before you please".

– Shakespeare in '*King Lear*' (Act IV Sc.VI)

110. *Supra* note 106 at 47-48.

111 *Supra* note 15.