

## SUICIDE AND CRIMINAL LAW

IN A very important judgment, the Supreme Court of India has held that attempt to commit suicide which has been made an offence under section 309, Indian Penal Code (IPC) can no longer be punished in India because (according to the Supreme Court) this section of the Penal Code is unconstitutional. The judgment was pronounced on 16 April 1994, in the case of *P. Rathinam v. Union of India*.<sup>1</sup> The court held that the section is against the provisions of article 21 of the Constitution under which the right to life is guaranteed and its deprivation is prohibited without the due process of law. In its opinion, the right to live brings in its trail the right not to live a forced life. After referring essentially to the medical and moral literature on the subject, the court took the view that a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking. Elaborating its position in this regard, it stated that section 309 deserves to be effaced from the statute book to humanise our penal laws.<sup>2</sup> It is a cruel and irrational provision and may result in punishing a person again (doubly) who has suffered agony and would be undergoing ignomy because of his failure to commit suicide. Attempt to commit suicide has no harmful effect on society and interference by the state with the personal liberty of the concerned person is not called for. The final conclusion of the court is in these words:<sup>3</sup>

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 humanisation, which is a need of the day, but of globalisation also, as by effacing section 309, we would be attuning this part of our criminal law to the global wave length.

In this context, it must be mentioned that as early as 1971, the Law Commission of India,<sup>4</sup> recommended the deletion of this section (with certain qualifications). The examination of the subject by the Commission was based on an approach to the proper scope of criminal law—a subject which holds its own independent interest and is of perennial importance for all countries. The Commission recorded its view that a penal provision punishing attempt to commit suicide must be regarded as harsh and unjustifiable. In this pithy sentence, it summed up at least two basic propositions which should normally govern good criminal legislation, namely, that the punishment (even where it is justified in the abstract) must be proportionate and also, that before prescribing punishment for

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1. J.T. 1994 (3) S.C. 392.

2. *Id.*, paras 112-3.

3. *Id.*, para 113.

4. *Forty Second Report on the Indian Penal Code*, para 16.33 (1971).

a particular act, the legislature must set itself to the task of exploring very carefully whether the conduct in question is one for which criminal sanctions are appropriate. It needs to be reiterated that the fact that the law ceases to punish a particular conduct does not mean that the law approves of it. As is often pointed out in studies relating to decriminalisation, there are various approaches in ascending and descending degrees of condemnation towards a particular conduct. The law may approve of a conduct in a positive manner. Or, without approving it, it may seem to tolerate it because legal sanctions are not considered appropriate for it. If the law does decide to express its intervention in some form, it may declare the particular conduct as illegal, but not necessarily criminal. This can be achieved by treating that conduct as actionable, and giving rise to a claim for damages. *Finally*, condemnation of the law in the strongest terms would be expressed by declaring the particular conduct to be an offence. Thus, the law may be travelling on a sliding scale, so to say. What needs to be remembered is that the jump from the first to the last step may not necessarily be taken in every case. In India, of course, section 309 ranked attempt to commit suicide on the highest end of the scale, but, after the judgment of the Supreme Court, it will not continue to occupy that particular place at the climax. Where, in the lower scale, it will now find its placing, is a matter which will depend on future legal developments.

Of course, non-punishability of an attempt to commit suicide does not necessarily mean non-punishability of abetment of suicide. The Supreme Court has briefly adverted to this aspect. It has also allayed the apprehension that euthanasia (mercy killing) will become legal after the judgment. It has drawn a distinction between B ending his own life and A instigating or aiding B to end his own life. The latter kind of conduct, punishable under section 306, IPC, remains outside the purview of the judgment, according to the Supreme Court.

It also needs to be pointed out that although an attempt to commit suicide will no longer be a crime in India, it does not mean that if the attempt is accompanied with other incriminating conduct, such as extortion, blackmailing or criminal intimidation, the law will not take note of those circumstances. Indian case law of earlier years of the present century presents some interesting examples of consent to an agreement being obtained by a threat to commit suicide. In the sixties of the present century, there was also a legal controversy whether a boy or girl who wants to marry a particular person and announces that otherwise he or she will commit suicide, can be said to have obtained the "consent" of the other party to the marriage by force. The reasonable view to take would be that the so-called consent in such circumstances is not a free consent.

Suicide has also figured frequently and prominently in case law relating to life insurance policies. Often, there are express exceptions made in such policies, to provide that the policy shall not cover the intentional taking of his own life by the assured person. Even without such an express stipulation in the policy, it can be reasonably argued that a person cannot take advantage of his own "wrong" to reap a benefit. Of course, much will depend on how far society continues to treat such conduct as wrong. Although there are observations in the

Supreme Court judgment to the effect that “an act of suicide cannot be said to be against religion, morality or public policy....”<sup>5</sup>, those observations were made only to emphasise the point that it would be unconstitutional to impose punishment for attempted suicide. The ramifications of the topic in the context of various doctrines of civil law were not before the court. Besides this, it is worth emphasising that considerations which prevail in the law of contracts in other branches of civil law may not, *in toto*, coincide with considerations operative in criminal law. This does not mean that the law adopts inconsistent approaches or is illogical. It only means that a particular conduct has so many facets, all of which cannot be absorbed in one single sentence.

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5. *Supra* note 1, para 112.

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