Aggression and Violent Behavior 14 (2009) 139–145

Contents lists available at ScienceDirect

Aggression and Violent Behavior

Is attempted suicide an offense?

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ARTICLE INFO

Article history:
Received 13 March 2007
Received in revised form 19 December 2008
Accepted 20 January 2009
Available online 24 January 2009

Keywords:
Right to live
Right to die
End of life decisions
Attempted suicide
Suicide
Physician-assisted suicides
Euthanasia

ABSTRACT

The English poet William Ernest Henley wrote: "I am the master of my fate, I am the captain of my soul." However, Hamlet's dilemma of "to be or not to be" faces many a soul in times of distress, agony and suffering, when the question asked is "to die or not to die". If the decision were to die and the same is implemented to its fructification resulting in death that is the end of the matter, the dead is relieved of the agony, pain and suffering and no evil consequences known to our law follow. But if the person concerned were unfortunate to survive, the attempt to commit suicide becomes punishable with imprisonment and fine under Section 309 of the Indian Penal Code (IPC). Petitions have assailed the validity of Section 309 IPC praying time and again to declare the section void. On the other hand, euthanasia and physician assisted suicide have become prominent public issues in many countries over the past few years. Several countries or regions of countries have debated legislation on euthanasia and/or physician assisted suicide. Although there is growing public acceptance of physician-assisted deaths all over the world, many professional organizations remain opposed to it. Most of the debates on the issue are usually framed as issues of morality while many basic empirical questions remain unanswered. This paper attempts to examine the causes and consequences of attempted and completed suicide.

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1. Introduction

In a historic judgment seeking to 'humanize' the criminal law, Division Bench of the Supreme Court of India on April 26, 1994 held that a person has a 'right to die' while declaring Section 309 Indian Penal Code (IPC) — a provision, which makes attempted suicide a penal offense, unconstitutional (Rathinam v Union of India, 1994). This decision, however, was short-lived and in 1996, Constitutional Bench of the Supreme Court reversed the decision (Gian Kaur v State of Punjab, 1996). On the other hand, In November, 1994, Oregon became the first state to legalize physician-assisted suicide when voters approved a ballot initiative, 'the Oregon Death with Dignity Act'. Implementation of the measure, however, was barred by an injunction

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doi:10.1016/j.avb.2009.01.003

when in August, 1995; a federal district judge ruled the measure unconstitutional (Lee, Nelson, Tilden, Ganzini, & Tolle, 1996). Although legally prohibited in most of the countries, the majority of the population accepts euthanasia, as medical practice. The dominant debates in the media no longer address the morality of euthanasia as such but, rather, focus on procedural arrangements to regulate the practice as carefully as possible. The guiding principles of medicine — autonomy, beneficence, non-maleficence and justice — are often argued to be less concerned with consequences (Sharma, 2003).

Furthermore, the debate over physician-assisted suicide concerns persons with debilitating and painful terminal illnesses. Opponents in the medical community, including Physicians for Compassionate Care, believe that physician-assisted suicide is contrary to the profession's purpose — to promote health. Religious opponents, including the Roman Catholic Church, Mormons, and Christian fundamentalists, feel that suicide of any kind devalues life. Not Dead Yet, an organization of disabled persons, believes that states should instead enact legislation to improve access to health and hospice care, and the over-all quality of life, for terminally ill patients. Many opponents are concerned that poor or uneducated patients will be pressured by family members or the healthcare insurance industry to choose death over life with its medically expensive consequences (Sharma, 2004a). Opponents of decriminalizing assisted suicide argue that decriminalization would lead to a "slippery slope" that would eventually result in doctors being allowed to assist persons who are not terminally ill to commit suicide. To the supporters of physician-assisted suicide, the issue is a matter of personal autonomy and control (Sharma, 2004b). The Hemlock Society, an organization that supports physician-assisted suicide, claims that terminally ill patients must be allowed to end their lives voluntarily rather than suffer through the painful and disabling effects of a terminal illness (Sharma & Harish, 2004).

Under modern U.S. law, suicide is no longer a crime. Some states, however, classify attempted suicide as a criminal act, but prosecutions are rare, especially when the offender is terminally ill. Instead, some jurisdictions require a person who attempts suicide to undergo temporary hospitalization and psychological observation (Vijaykumar, 2007). In the past, there was considerable sentiment for making attempted suicide an offense: the thought persisted that it was contrary to societal interest to attempt to take human life, even one's own life. That policy has been generally rejected today. It is widely accepted that one who is bent on self-destruction is not likely to be deterred by the possibility of punishment if he fails. Thus, the rationale for punishing attempted suicide is eliminated. In India, attempted suicide is a punishable offense (Suicide Act, 1961). However, Section 309 of the Indian Penal Code states that "whoever attempts to commit suicide and does any act towards the commission of such an offense shall be punished with simple imprisonment for a term which may extend to one year or with a fine or with both (Sharma, Sharma, & Harish, 2006).

It is ironic that in the age of votaries of Euthanasia, attempted suicide should be criminally punishable. Instead of the society hanging its head in shame that there should be such social strains that a young person should be driven to suicide, it compounds its inadequacy by treating the person as a criminal. Instead of sending the young boy to psychiatric clinic, it sends him to mingle with criminals thus necessitating a reexamination of many questions.

2. Why is a law enacted and what object(s) it seeks to serve?

It is from the time of the Renaissance and the Reformation when men, as a result of these great revolutionary movements broke away from rule of custom and tradition, that legislation began its career as an instrument of social and political, and even religious, change. However, the laws made must respect the right to liberty and property; and laws must be made for the good of the people. The laws and legislation should conform with the spirit of the people, its traditions, its philosophy of life, even the physical surroundings of the people, including the climate (Ruthnaswamy, 1974).

Macaulay believed in the efficacy of law in improving people and their character. He wrote: "When a good system of law and police is established, when justice is administered affordably and firmly, when idle technicalities and unreasonable rules of evidence no longer obstruct the search for truth, a great change for the better may be expected which shall produce a great effect on the national character (Ruthnaswamy, 1974)."

According to Ihering, law is a means to an end. He laid down the following general principles of legislation: "Laws should be known to be obeyed; should answer expectations; should be consistent with one another; should serve the principle of utility; should be methodical; must be certain to be obeyed, must not become a dead letter; are necessary to ward off the danger of the operations of egoism or self-interest, the ordinary motives of human action. Law and legislation must aim at justice, which suits all (Ruthnaswamy, 1974)."

In the historical perspective, one can easily appreciate the complexities and intricacies of legislation, which the present legislatures are to face. Besides the ordinary laws, which safeguard the rights and liberties of the individual, there are certain fundamental laws which ordinary legislation may not change. The fundamental principles on which the political life of the people is based are individuality, equality, and justice. After securing the life and liberty of the State and of the individual, laws and legislations take on the task of serving and promoting the good life of the State and the people. For good life, morality is necessary and to maintain morality legislation is a must. Legislation, therefore, is the framework, which is required to be made for good life.

3. Why is a particular act treated as crime?

Earliest reference to the word 'crime' dates back to 14th century when it conveyed something reprehensible or wicked. Any conduct which a sufficiently powerful section of any given community feels to be destructive of its own interest, as endangering its safety, stability, or comfort is usually regarded as heinous. And it is sought to be repressed with severity and the sovereign power is utilized to prevent the mischief or to punish anyone who is guilty of it. Crimes are often creations of government policies and the Government in power forbids a man to bring about results, which are against its policies. In a way, there is no distinction between crime and tort, inasmuch as a tort harms an individual whereas a crime is supposed to harm a society. However, a society is composed of individuals; harm to an individual is ultimately harm to society (Kenny quoted in Rathinam v Union of India, 1994; Kenny's Outlines of Criminal Law, 1994).

A crime presents three characteristics: (1) it is a harm, brought about by human conduct which the sovereign power in the State desires to prevent; (2) among the measures of prevention selected is the threat of punishment; and (3) legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so. Protection of society is the basic reason of treating some acts as crime. Indeed it is one of the aims of punishment. Where there is no feeling of security, there is no true freedom (Maruti v. State of Maharashtra, 1986).

One very simple principle, to govern absolutely the dealings of society and the individual is the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. The sole end for which mankind is warranted individually or collectively, in interfering with the liberty of action of any of their member, is self-protection — the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient