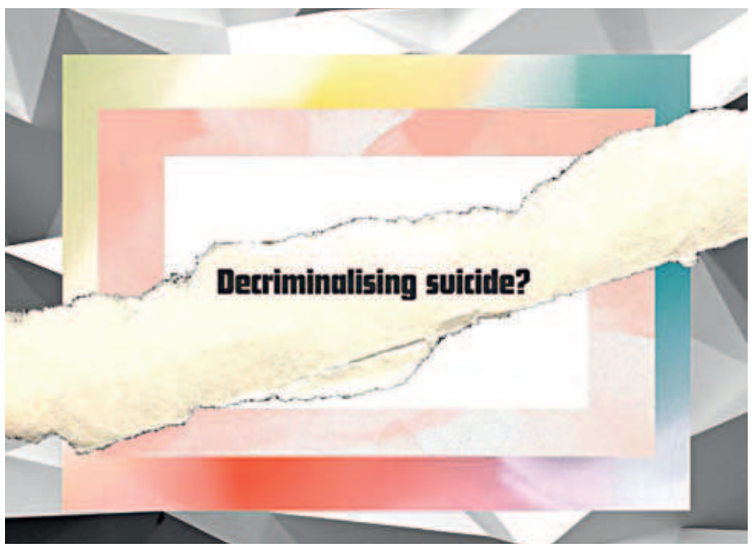
LAW REFORM

Decriminalising the attempt to commit suicide



RAFID AZAD SAUMIK

In Bangladesh, a comprehensive study by the Centre for Injury Prevention and Research, Bangladesh (CIPRB) in 2013 found that more than 10,000 people die every year owing to suicide. It is important to note that attempting to commit suicide is a punishable offence under section 309 of the Penal Code, 1860.

Although we inherited this law from our *colonial Master*, the British decriminalised the attempt to commit suicide through the Suicide Act, 1961. In fact, today, only around twenty-three countries still have such "anachronism unworthy of a humane society" as was observed by Rajinder Sachar, J in the case of *State* v *Sanjay Kumar Bhatia* (1985).

Whether section 309 of the Penal Code should be deemed to be unconstitutional or not is a matter where we do not have much jurisprudence. However, in India, there has been ample discussion on the constitutionality of section 309 of the Indian Penal Code (IPC). The first landmark judgment to discuss in this regard is *P. Rathinam* v *Union of India* (1994) where the issue before the Divisional Bench of the Supreme Court was whether the said section is unconstitutional or not. The divisional bench held that section 309 contravenes Article 21 of the constitution of India, which is similar to Article 32 of Bangladesh's constitution. The Court noted that "a person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking". According to the Court the right to life includes "the right not to live a forced life."

This dictum was, however, reversed in the case of *Gian Kaur* v *State of Punjab* (1996). The principal question before the full bench of the Apex court was if section 309 is unconstitutional, how can the abetment of the same be punishable under section 306 of the IPC (which is similar to section 306 of our penal code)? The Court reversed the decision of the *Rathinam* case and held that both sections 306 and 309 are constitutional. The court stated, "the 'right to life' is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life."

However, the author would like to humbly disagree with the judgment of the *Gian Kaur* case and submit that the dictum of the *Rathinam* case is more correct. Firstly, the *Rathinam* case in para 102 of its judgment had already dealt with the apprehension about whether section 306 of the IPC could survive without section 309 or not. The court correctly observed that these two offences are on different footings, and one does not depend for its survival upon the other. This is clearer now as India, in its new penal law- '*The Bharatiya Nyaya Sanhita*', has omitted the provision of 'attempt to commit suicide' but kept the provision relating to abetment of suicide and therefore proved that one can survive without the other. Secondly, the Supreme Court in its latest landmark judgment *Aruna Ramchandra Shanbaug* v *Union of India* (2011) stated in its obiter, "Although section 309 has been held to be constitutionally valid in *Gian Kaur*'s case the time has come when it should be deleted by Parliament as it has become anachronistic." In pursuance of the recommendation, India, at first, partially decriminalised attempted suicide by enacting section 115 of the Mental Healthcare Act, 2017 and later, fully with their new penal law.

Criminalisation of attempted suicide is unfair, ineffective, and counterintuitive. All it really does is it shifts our focus from the real social, economic, or psychological reasons behind suicide and blame a person who is perhaps already going through tremendous mental agony and pain. If we want to really solve this problem, we need to start by decriminalising attempted suicide.

Coming to the question of the most effective way of dealing with the problem of suicide, the World Health Organisation (WHO) in its report "Preventing Suicide: A Global Imperative" in 2014 mentions that countries need to take steps to destigmatise mental-health related issues, raise awareness, build a robust mental health system and related facilities, etc to properly tackle this problem. However, criminalisation of attempts to commit suicide further perpetuates the stigma and blames the person wanting to commit suicide rather than focusing on solving the problems that are causing people to take such drastic actions. Furthermore, it is sometimes argued by people who support the criminalisation of attempted suicide that if attempted suicide is decriminalised then other acts like 'suicide bombing' or 'blackmailing with the threat of committing suicide' will also cease to be offences. However, such an argument is ill-founded as such actions are clearly penalised under section 13 of the Arms Act 1878, section 383 of the Penal Code, etc.

The argument that criminalisation of attempted suicide has deterrent effect is also superficial in that people who have made their minds to commit suicide would perhaps do it anyway regardless of the punishment. Rather, the law punishes them if and when their attempt falls short. Hence, this law, instead of being sympathetic towards the people who have survived, stigmatises them further and creates an even more onerous situation for them. In our context, the enacting of the Mental Health Act 2018 is seemingly a step in the right direction.

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The writer is Law Desk Assistant, The Daily Star.

RIGHTS ADVOCACY

A stand-alone human right to healthy environment

SOEB AKTAR

Addressing the climate crisis in a way that not only protects the environment and lowers emissions, but also makes the world a more equitable, just, and fair place to live is known as climate justice. The well-known human rights campaigner Mary Robinson asserts that in order to achieve climate justice, the conversation about greenhouse gasses and ice caps must give way to a civil rights movement that puts the needs of the most disadvantaged individuals and communities at the center.

The right to life, food, water, shelter, health care, and other fundamental rights all can get adversely impacted by rising sea levels, temperatures, and changes in precipitation. The Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966 all recognise these rights. They are also enshrined in a number of group-based UN human rights treaties, including the 1989 Convention on the Rights of the Child, the 2006 Convention on the Rights of Persons with Disabilities, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.

The UN human rights framework does not, however, recognise a stand-alone right to safe and heathy environment. Indeed, the more just addition to the global human rights framework could be such a right. By imposing obligations to protect the environment for future generations, such a right could not only advance intra- and inter-national justice, but also intergenerational justice.

The UN human rights framework does not, however, recognise a stand-alone right to safe and heathy environment. Indeed, the more just addition to the global human rights framework could be such a right. By imposing obligations to protect the environment for future generations, such a right could not only advance intra- and inter-national justice, but also intergenerational justice.

With regard to climate justice, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters has greater significance. The Aarhus Convention is seen by scholars as embracing a strong human rights approach since it grants rights to persons rather than to states, reinforces procedural justice, and includes non-compliance measures that closely resemble those of human rights monitoring authorities. It can therefore be viewed as a step towards granting everyone the right to a safe and healthy environment.

Climate justice is expected to be realised when developed nations cut down on their greenhouse gas emissions in accordance with their shared but differentiated responsibilities, offer short- and long-term climate finance to assist the most vulnerable in adapting to the effects of climate change, pursue low-carbon development strategies, and make sure that technology transfer and capacity building support the most vulnerable in becoming more resilient to climate change. The language of a stand-alone human right to healthy environment has the potential to morally strengthen the obligation of the states to contribute to the cause of climate justice. Viewing right to healthy environment as parasitic on other human rights does not really engender similar moral impact.

The writer teaches law at the Dhaka International University.

LAW WATCH

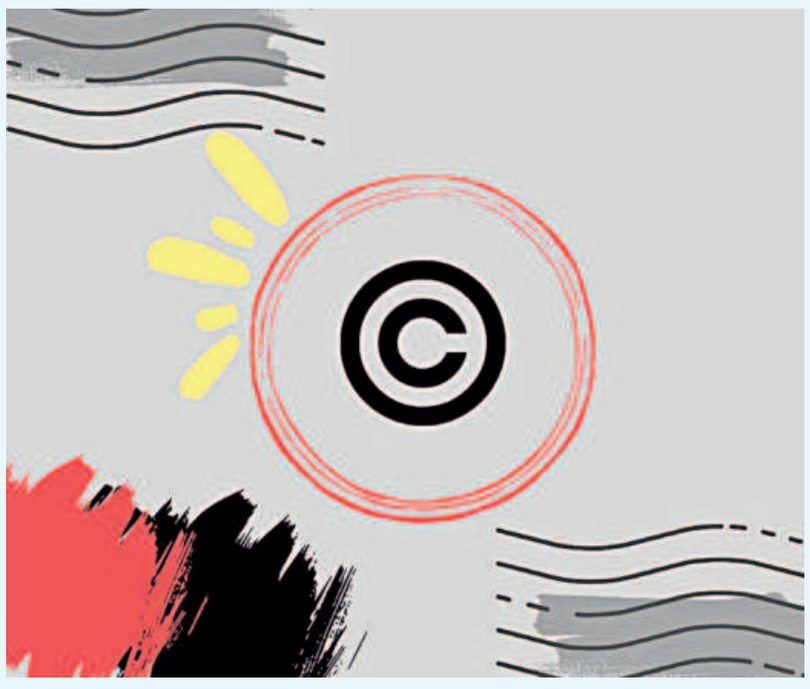
Fair use of the copyrighted works in Bangladesh

ABUZAR GIFARI

The Copyright Act 2023 brought many significant changes replacing its predecessor- the Copyright Act 2000. One such significant change is the incorporation of the liberal version of the 'fair use' provision. This write-up examines the scopes and limitations of this incorporation.

In general, copyright involves exclusive rights for owners to copy, distribute, reproduce, perform, translate, and other actions related to their works. This entails restricting unauthorised use by others of such copyrighted works. Alongside protecting the proprietors' interests, copyright law also safeguards users' interests through mechanisms like 'fair use' or 'exception clauses,' as outlined in Article 9(2) of the Bern Convention for the Protection of Literary and Artistic Works 1886 and Article 13 of the TRIPS Agreement 1994, respectively. These provisions have established three-step tests for utilising copyrighted works without the owner's consent. Firstly, there must be certain special cases. Secondly, such use or reproduction does not conflict with the normal exploitation of the work. And finally, such use or reproduction does not unreasonably prejudice the legitimate interests of the author.

In respect of the first test, the term 'certain special cases', though not defined in Bern Convention, implies that the member countries of the union are free to include some special circumstances in their respective legislation. By this, the Convention restricted the use of 'exception clauses' within a certain list of exceptions only. Bangladesh had included a conventional list of exceptions in section 72 of the previous copyright law— the Copyright Act 2000. If any use went beyond the list, it would have counted as an infringement of copyright. This type of 'specific exceptions clauses' is analogous to the British model of 'fair dealing'. On the other hand, the *United States* v *Elcom Ltd* (2002) observed that the US model of 'fair use' requires case by case determination of the exceptions. The author believes that a closer scrutiny of sections 2(42) along with sections 70 and 73 of the Copyright Act 2023 indicates that Bangladesh has entered into a more flexible regime of 'fair use' from 'fair dealing'. It has omitted the previous conventional lists of exceptions. Therefore, now a creation or content of another can be copied for 'any purposes' subject to the fulfilment of the other two tests.



The second test essentially prohibits the cover-to-cover copying of the work. Rather, it permits copying a small portion of the work. What constitutes such small portion has been left to the member countries of those conventions. In the case of *Cambridge University Press* v *Becker* (2012) the US Supreme Court held that on an average, 10% of the whole work is within the permitted degree. Contrarily, in the *Chancellor, Masters and Scholars of the University of Oxford* v *Rameshwari Photocopy Services (2016),* popularly known as the *Delhi University Photocopy Case,* India took an extraordinary position that a whole work can be copied for the purpose of education.

Further, the third test prohibits the unreasonable commercial use of copyrighted works which prejudices the interests of the owner. Therefore, reasonable commercial use is permitted. Following this provision, section 2(42) of the Copyright Act 2023 includes the term- 'innocent commercial use'. No definition of 'innocent commercial use' has been provided in the Act. In the same *Delhi University Photocopy* case, the Indian Court justified the copying of a whole portion of the copyrighted work for profitable educational purposes. In the absence of the interpretation of 'innocent commercial use' in our domain, the interpretation given in the *Delhi University Photocopy* case may be well-suited for Bangladesh as well.

In conclusion, it is submitted that the Copyright Act has opened a floodgate for 'fair use' by omitting the conventional list of purposes while at the same time extending the purview of 'fair use' to 'innocent commercial use'. Hence, the concerned authority must be careful while considering the 'fair use' provision so that it is not misused.

The writer is an LLM candidate at the University of Dhaka.