
(1974) 07 CAL CK 0004
In the Calcutta High Court
Case No : Suit No. 2164 of 1964

Keshar Debi Boid

APPELLANT

Vs

Life Insurance Corporation of India

RESPONDENT

Date of Decision : 10-07-1974

Acts Referred:

Constitution of India, 1950 — Article 19(5)
Penal Code, 1860 (IPC) — Section 305, 306, 309

Citation : 79 CWN 246

Hon'ble Judges : S.C. Deb, J

Bench : Single Bench

Advocate : Dipanker Ghosh and S. Kapor, for the Appellant; Mrigen Sen and H.M. Dhar, for the Respondent

Judgement

S.C. Deb, J.—Two joint Life-policies dated April 21, 1959 and April 8, 1960 are the subject matters of this suit. They were issued by the defendant in favour of the plaintiff and her husband, who took his own life on December 25, 1961. The sums assured are respectively payable on December 28, 1978 and December 28, 1979 to them if they are then alive or to their survivor "at the first death of either of them, if earlier". The policies contain the following "Suicide" clause : --

In case either of the Lives Assured shall within one year from the date of this Policy commit suicide, whether insane or not at the time, the liability of the Corporation shall be limited to the extent of the beneficial interest which any person (other than the Lives Assured) shall prove to the satisfaction of the Corporation to have been acquired in the Policy bona fide and for valuable consideration of which notice in writing shall at least one calendar month previous to death have been given to the within-mentioned Divisional Office of the Corporation and save and except to that extent this Policy shall be void and all claims to any benefit, advantage or interest in the funds of the Corporation by virtue of this policy shall cease and determine.

The wife has brought this action against the Insurer, for they have denied their

liability to pay the assured sums to her in view of the self-inflicted death of her husband. Issue No. 1 was deleted by consent of the parties and the agreed issues on which the trial proceeded are as follows:

(ii) Did the policies become void or unenforceable on the ground alleged in paragraph 12(a) of the Written Statement?

(iii) Are the claims not payable under the policies and in any event such payment would be opposed to public policy on the ground stated in paragraph 12(a) of the Written Statement?

(iv) Does the plaint disclose any cause of action?

(v) To what relief, if any, is the plaintiff entitled?

2. It has been contended by the learned Counsel Mr. M.M. Sen for the Insurers, that the agreement contained in the suicide clause is that if suicide is committed at any time by either of the lives assured it shall make the policies absolutely void so far as the survivor is concerned and, therefore the plaint does not disclose any cause of action as the husband has committed suicide in this case. But I am not impressed by it. In my opinion, the expression "In case either of the Lives Assured shall within one year from the date of this policy commit suicide" governs the whole clause and this clause expires with the expiry of one year if no suicide takes place within that stipulated year and as the husband has committed suicide after the expiry of this clause the policies have become incontestable by the Insurers.

3. The next contention of Mr. Sen is founded upon the following observations of Lord Atkin in the case of *Beresford v. Royal Insurance Company Limited*, reported in 1938 A.C. 556 at p. 595 of the report:--

On ordinary principles of insurance law an assured cannot by his own deliberate act cause the event upon which the insurance money is payable. The insurers have not agreed to pay on that happening. The fire assured cannot recover if he intentionally burns down his house, nor the marine assured if he scuttles his ship, nor the life assured if he deliberately ends his own life. This is not the result of public policy, but of the correct construction of the contract.

4. Submission of Mr. Sen is that suicide is a deliberate act of misconduct and, therefore the husband cannot cause the maturity of these policies by his self-inflicted death. But, Lord Atkin has himself confined this principle to such cases where "there is no express reference to suicide in the policy" at p. 594 of the report and, further, here the parties have applied their mind to the question of suicide and they have expressly limited it to one year. Hence, the maxim "expressum facit cessare taciturn" overrules this contention of Mr. Sen.

5. My reading of these two contracts of insurance, as already indicated, is that they do not protect the Insurers from the self-inflicted death of either of the lives assured if such death occurs after the expiry of the stipulated year from the

respective dates of these policies, and therefore I am not impressed by the contentions of Mr. Sen founded upon the suicide clauses of these policies.

6. This being the true construction of these two contracts, it leads me to an important question of public policy raised by Mr. Sen. His contention is that suicide is opposed to public policy of our country and, therefore, the plaintiff should be non-suited, for her husband has committed suicide. In support of this contention he cited the relevant portion of Article 543 of Volume 22 of Halsbury's Laws of England (3rd Ed.) which reads as follows :--

.....public policy prohibits payment of the policy being enforced, if the death of the assured is the result of his own deliberate criminal act... Again, if the assured commits suicide while of sound mind, the insurers are entitled to invoke public policy as a bar to payment to the personal representatives of the assured. This rule applies even if the policy covers deliberately self-inflicted death provided it takes place after the expiration of a stipulated period; such a policy operates as an honour policy only, since, even with a proviso of this kind, the policies cannot be the foundation for legal action by the personal representatives.

7. But, this law does not apply to our country, for suicide was v. Common Law crime in England, whereas it is not a crime under our Criminal law. It is opposed to public policy of all civilized nations to allow a criminal to take advantage of his crime and, hence the House of Lords, on this principle of public policy, non-suited the assignee in bankruptcy of the life assured who was executed for committing a crime in the case of *Amicable Insurance Society v. Bolland*, reported in (1830) 4 Bligh (N.S.) 194. Again, the House of Lords, in *Beresford's case* (supra) dismissed the appeal preferred by the personal representative of the life assured, who had committed suicide with the sole intention of benefitting his estate and, at p. 599 of the report, Lord Atkin says this :--

.....the absolute rule is that the Courts will not recognise a benefit accruing to a criminal from his crime.. Deliberate suicide, *felo de se*, is and always has been regarded in English Law, as a crime, though by the very nature of it the offender escapes personal punishment..... I cannot think the principle of public policy to be so narrow as not to include the increase of the criminal's estate amongst the benefits which he is deprived of by his crime. His executor or administrator claims as his representative, and, as his representative, falls under the same ban.

8. Strong reliance was placed by Mr. Sen also on the above sayings of Lord Atkin in support of his contention that it will be opposed to public policy of India to allow the assured to take advantage of his suicide but, as already pointed out, suicide was a crime in England and therefore it must be held that the above principle is solely confined to the criminal act of the life assured in bring his own premature death by suicide which would debar his personal representative from enforcing the claim under the life-policy against the insurers.

9. Further, suicide as a crime was abolished in England by the Suicide Act, 1961 and there is not yet any reported decisions of the English Courts directly on this

question. The opinion of the learned editors of Cutty's Contracts (23rd Ed.) Vol. 1 at p. 436 is "that public policy is no longer a bar to any claim resulting from the suicide of the assured." And the learned editor of Anson's Law of Contract (22nd Ed.) at p. 342 on Beresford's case says this:--

This case would certainly not be followed at the present day, for suicide is no longer a crime, and the rule itself is probably too widely stated. It is submitted that it will only apply where the statute or head of public policy is such as to require that the offender be deprived of the fruits of his illegal acts, and even then the benefit will be recoverable unless it is something to which, but for the illegality, he would have had no right or title.

10. Hence, it has been contended by the learned Counsel Mr. Dipankar Ghose, for the plaintiff and his learned junior Mr. Kapur, that the principle laid down in Beresford's case and reiterated in Halsbury's Laws of England is no longer good law even in England, and though there is much force in it yet I express no final opinion on it, for, in my opinion,- this law is confined solely to those cases where suicide is an offence under the Criminal law and therefore it has no application in our country, for suicide is not a crime under our Penal Code nor has our Legislature outlawed it by any other enactment.

11. It has been held in the case of AIR 1938 561 (Lahore) , cited by Mr. Ghose, that suicide, by itself, being not a crime in India, the claim of the assignee of a life policy cannot be defeated by the suicide of the assured. But, it is an elementary principle of law of life insurance that in the absence of a contract to the contrary the claim of the assignee for value cannot be defeated by the suicide of the life assured. And whether suicide is opposed to public policy on any other ground was not considered in that case, and therefore, it is not an authority on the question involved before me.

12. Mr. Ghosh then relied on the case of Scottish Union & National Insurance Co. v. N. Roushan Begum, reported in AIR 1945 Oudh 152 at pp. 159-60 of the report, which reads as follows : --

We have next to consider whether suicide is against public policy on any ground other than that of its being a crime. For this purpose it is necessary to turn to the observations of their Lordships Board in 9 M.I.A. 387....The main question which fell to be decided in that case was whether or not the goods and chattels of a Hindu could be forfeited to the Crown by reason of his having committed suicide and having been found a *felo de se* by the Supreme Court at Calcutta. Their Lordships observed that the question before them must depend upon whether the English law by which the goods and chattels of a *felo de se* are forfeited to the Crown, has ever been introduced into Calcutta and if so whether it applies to Hindus dealing with the charter of King George I by which in the year 1726 the first introduction of English law was effected and the Mayor's Court was established in Calcutta, their Lordships observed as follows :

We are, therefore, of opinion, that the Charter of George I, did not intend to

render the goods and chattels of a jelo de se liable to be forfeited to the Crown even in the case of British subject. But even if it did so it is wholly improbable that such a law should have been intended to apply to Mahomedans and Hindoos, even if the Crown had the power at that time to make a law binding upon them which is disputed by Lord Brougham. At that time there was no law in India by which property was forfeited by suicide. By the Mahomedan law suicide was not an offence and did not cause any forfeiture of property. Even wilful homicide was justified if committed at the request of the person killed. Nor should it be forgotten that at that time Suttee, though not enjoined by the religion of the Hindoos had not been declared to be a crime; and that the ignorant and deluded votaries of Juggernaut were under the belief that eternal happiness was obtained by self-sacrifice under the wheels of the Idol's car."

* * * * *

Public policy in regard to suicide must, therefore, be public policy determined by the sense in which the law and public opinion of the country in which it takes place understand it. Suicide in India under certain circumstances is approved, and we conceive that in a country like Japan, for example, suicide is considered to be highly meritorious in certain circumstances. We remember that at one time the murder of a gallant combatant in a duel was by no means looked at with disfavour by the law of France. In India we would unhesitatingly hold that suicide is not against public policy as exhibited by the normal conception of society or as conceived by its laws.

13. I am constrained to say that the quotation from the case of Advocate General of Bengal v. Ranee Surnomoye Dossee, reported in 9 M.I.A. 387, is not the opinion of Lord Kingsdown in the Judicial Committee of the Privy Council but of Sir Barnes Peacock in this Court and speaking for the Judicial Committee at p. 428-29 of the report Lord Kingsdown says this:

Self-destruction, though treated by the law of England as Murder, and spoken of in the case to which we have referred in Plowden as the worst of all Murders, is really, as it affects society, and in a moral and religious point of view, of a character very different not only from all other Murders, but from all other Felonies. The truth is, that the act is one which in countries not influenced by the doctrines of Christianity has been regarded as deriving its moral character altogether from the circumstances in which it is committed :-- sometimes as blameable, sometimes as justifiable, sometimes as meritorious, or even an act of positive duty.

In this light suicide seems to have been viewed by the founders of the Hindoo Code, who condemn it in ordinary cases as forbidden by their religion; but in others, as in the well-known instances of Suttee and self-immolation under the car of Juggernaut), treat it as an act of great religious merit.

We think, therefore, the law under consideration inapplicable to Hindoos, and if it had been introduced by the Charters in question with respect to Europeans, we

should think that Hindoos would have been excepted from its operation. But that it was not so introduced appears to us to be shown by the admirable judgment of Sir Barnes Peacock in this case; and if it were not so introduced, then as regards Natives, it never had any existence.

14. The selfinflicted death in Ranee Surnomoyee's case took place long prior to the enactment of our Penal Code and neither Sir Farnes Peacock nor Lord Kingsdown was at all concerned with the question of public policy relating to suicide in our country. This decision is not an authority on this question and, therefore, the learned Judges of the Oudh Court, in my opinion, fell into an error by relying on the observations of Sir Barnes Peacock which they unfortunately assumed to be that of Lord Kingsdown. Further, by deducing a principle from that observation they came to the conclusion that suicide was not opposed to public policy of our country. But it is not permissible to deduce any such principle is in law laid down by Lord Halsbury in the case of *Quinn v. Leathern*, reported in (1901) A.C. 495, and approved by the Supreme Court in the case of *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, of the report, and followed by me, with the concurrence of Mr. Justice Gupta, in my judgment dated February 13, 1973 in the case of *Sri Sri Radha Gobinda Jew & Ors. v. Smt. Kewala Devi Jaiswal & ors. being L.P.A. No. 70 of 1973 of this Court*.

15. Suicide cannot be made an offence, for no one can punish a departed soul, and yet our Legislature has condemned it in no uncertain terms which is clear from the plain reading of our Penal Code. Abatement of suicide of a child or of an insane person is an offence u/s 305 and abatement of suicide of a same person is also an offence u/s 306 of our Code. Similarly, an attempt to commit suicide by any person is also an offence u/s 309 of the Code and the only defence available to him is that he was in non compos mentis at the time of making such attempt.

16. This aspect of the matter was also not considered by the learned Judges of the Oudh Court, and further there was non-suicide clause in that life policy which was before them. Hence, their ultimate decision on the merits of that case is hit by the law laid down by Lord Atkin namely that in the absence of an express term in the life policy relating to suicide the personal representative of the assured cannot recover if the assured "deliberately ends his own life" in *Beresford's* case which was cited before them, but I agree with them that public policy on suicide must be determined "by the sense in which the law and the public opinion of the country in which it takes place understand it", but, again with due respect to them, I am unable to accept their reasons.

17. Changes have changed the days. Satidaha is banned. Self-destruction under the chariot of Lord Juggernath has become obsolete in modern India. And the coffin cannot be upturned to let loose the ghost of the supposed public policy for trembling a few tremulous soul. Harakiri may be good in Japan and a murderer in a dual might have escaped punishment under the old French law. But, it is not permissible to import public policy of other countries into our soil, for public

policy varies from race to race, from nation to nation, from State to State, and from age to age in the same State. Hence, I consider myself free to express my own opinion on this question and before I do it I would like to weed my own field.

18. It has been held in the case of *Ritter v. New York Mutual Life Insurance Co.*, reported in 169 U.S. 139, by the Supreme Court of U.S.A. that it is opposed to public policy to allow the personal representative to recover under the life policy of the assured who has committed a sane suicide. Hence, to get rid of this decision, Mr. Ghose placed strong reliance on a contrary judgment of that Court in the case of *North Western Mutual Life Insurance Co. v. Isabel H. Jhonson*, reported in 254 U.S. 96, which was delivered by Mr. Justice Holmes, whose name I always utter with great respect. This decision of Mr. Justice Holmes became the law of the United States of America save in those States where suicide has been declared as opposed to public policy as appears from 37 CJ 551-55 and 45 CJS 925-26.

19. These two decisions and the other earlier decisions of the Supreme Court of the United States were considered by Lord Wright in the Court of Appeal in *Beresford's* case reported in (1937) 2 K.B.D. 197, and at p. 219 of the report his Lordship says this:--

Whatever the position may be in the United States, where each State, by legislative or judicial action of its own, can, it seems, determine the legality of a policy which expressly or by implication provides for payment of the policy moneys in whole or in part in the case of suicide, sane or insane, we cannot, we think, consistently with the law of England, as we understand it, hold that the respondent can successfully maintain her claim.

20. Social circumstances of England and of America are vastly different from the social circumstances of our country, and hence, in the case of *Bakshi Das v. Nadu Das*, reported in (1905) 1 Cal. L.J. 261 at p. 268 of the report, Sir Asutosh Mukherjee says this:

I am unable to accept the argument that what is opposed to public policy in England is necessarily opposed to public policy in this country.

21. *Beresford* was non-suited, for suicide was a crime in England and public policy of England debarred a criminal from conferring a benefit on his estate by his criminal act, whereas Isabel, and not Hitter, recovered the assured sums, for suicide was not opposed to public policy of her State. These decisions, therefore, cannot assist the either party before me, for public policies of other countries cannot be a guide for determining this issue before me.

22. The next contention of Mr. Ghose is that this Court has no power to invent a new head of public policy on suicide to nullify the sanctity attached to contracts, for, according to him, its authority is confined either to apply or to expound its principles established by precedents. He cited the following obitur dictum of Lord Halsbury from the case of *Janson v. Driefontein Consolidated Mines Ltd*-reported

in 1902 A.C. 484 at p. 491 of the report:--

I do not think the law of England does leave the matter so much at large as seems to be assumed. In treating of various branches of the law learned persons have analysed the sources of the law, and have, sometimes expressed their opinion that such and such a provision is bad because it is contrary to public policy; but I deny that any Court can invent a new head of public policy.

23. He also drew my attention to the following observations of Lord Wright, in the case of *Fender v. St John Mildmay*, reported in 1938 A.C. 1, at p. 40 of the report:--

It is true that it has been observed that certain rules of public policy have to be moulded to suit new conditions of a changing world : but that is true of the principles of common law generally. I find it difficult to conceive that in these days any new head of public policy could be discovered.

24. The opinion of Lord Halsbury was not, however, accepted by Lord Atkin in *Fender's* case (*supra*) at pp. 11-12 of the report in the following terms:--

In the same case Lord Halsbury indeed appeared to decide that the categories of public policy are closed, and that the principle could not be invoked anew unless the case could be brought within some principles of public policy already recognised by the law. I do not find, however, that this view received the express assent of the other members of the House; and it seems to me, with respect too rigid. On the other hand, it fortifies the serious warning illustrated by the passages cited above that the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds. I think that this should be regarded as the true guide. In popular language, following the wise aphorism of Sir George Jessel cited above, the contract should be given the benefit of the doubt.

25. Mr. Ghose then took me through the nine types of agreement that are held to be opposed to public policy, at page 321 of Prof. Cheshire's *Contract* (8th Edition), and then he placed strong reliance on the following observations of my own Professor at p. 322 of this treatise :

Two observations must be added upon the doctrine of public policy in the current law.

First, although the rules already established by precedent must be moulded to fit the new conditions of a changing world, it is no longer legitimate for the courts to invent a new head of public policy. A judge is not free to speculate upon what, in his opinion, is for the good of the community. He must be content to apply, either directly or by way of analogy, the principles laid down in previous decisions. He must expound, not expand, this particular branch of law. The heads of public policy thus comprise, and are limited to, the nine types of contract already enumerated on page 321, *supra*.

Secondly, even though the contract is one which prima facie foils under one of the recognised heads of public policy, it will not be held illegal unless its harmful qualities are indisputable.

26. In overruling the contention that a wagering agreement is opposed to public policy of our country, Subba Rao, J., in the case of *Gherulal Parakh v. Mahadeodas Maiva and ors.*, reported in AIR 1959 S.C. 794 at pp. 795 and 797 of the report, said this:--

Public policy or the policy of the law is an illusive concept;....the primary duty of a Court of Common Law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the Court may relieve them of their duty on a rule founded on what is called the public policy; the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days.....Even if it is permissible for Courts to evolve a new head of public policy under extraordinary circumstances giving rise to incontestable harm to the society, we cannot say that wager is one of such instances of exceptional gravity, for it has been recognised for centuries and has been tolerated by the public and the State alike. If it has any such tendency, it is for the legislature to make a law prohibiting such contracts and declaring them illegal and not for this Court to resort to judicial legislation.

27. Reliance was placed by Mr. Ghose on the last sentence of this decision, but the Supreme Court has also said that "the heads" of public policy "are not closed". It cannot be said that the Court has no longer any power to invent a new head of public policy. To deny such power is to deny the continuous evolution of the society and to sign the death warrant of the common law for the principles relating to public policy were evolved mainly by the learned judges of each and every country. The "volcano of Common Law", is the expression used by Dr. R.B. Mukherji at p. 125 of his "New Jurisprudence" and I say that no judicial vacillation can ever stop its eruption, for this volcano is not yet dead. And no country has any supremacy in it, for, at p. 13 of Preface to his "Legal Esseys and Addresses", Lord Wright says this :--

In Blackstone's day the Common Law was the law of a few million people in England and Ireland, and if the colonies, plantations and settlements were added, perhaps a quarter of a million more. Now in these islands there may be perhaps forty millions living under English law, but the Common Law has long passed its old boundaries. Under its sway live the teeming millions of the United

States.....Then there are Canada, Australia, New Zealand, great now but with unforseeable potentialities. The enormous subcontinent of India has adopted, except for family and other racial or religious law, the Common Law which there regulates the great mass of dealings between man and man. In each of these great collections of mankind there are judges enunciating the law and schools teaching it, and professors meditating upon it, seeking to criticise and reform it. England cannot have a monopoly, or even a primacy in this great and widespread development.

28. The learned editor, in his introduction to "The Common Law" (1963 Ed.) of Mr. Justice Holmes, at p. 18, says: "Law is made, not by the commands of Austin's sovereign, but by judges, responsive at once to the dictates of tradition and to their own and the community's judgment of what is required by public policy." And Mr. Justice Holmes at pp. 31-32 of this treatise says this :--

The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis. And as the law is administered by able and experienced men, who know too much to sacrifice good sense to a syllogism, it will be found that, when ancient rules maintain themselves in the way that has been and will be shown in this book, new reasons more fitted to the time have been found for them, and that they gradually receive a new content, and at last a new form, from the grounds to which they have been transplanted.

29. In the case of *Haseldine v. C.A. Daw & Son*, reported in (1941) 2 K.B. 343 at pp. 362-63 of the report, Lord Justice Scott says this:--

The common law of England has throughout its long history developed as an organic growth, at first slowly under the hampering restrictions of legal forms of process, more quickly in Lord Mansfield's time, and in the last one hundred years at an ever increasing rate of progress as new cases, arising under new conditions of society, of applied science and of public opinion, have presented themselves for solution by the courts.

30. It has been said by Prof. Win-field, in his article on Public Policy published in 42 HLR 6 at p. 92, that public policy "is a principle of judicial legislation or interpretation founded on the current needs of the community," and in the case of *Eventual v. Eventual*, reported in (1874) 6 P.C. 1 at page 29 of the report, the Judicial Committee of the Privy Council says this:--

The determination of what is contrary to the so-called "policy of the law" necessarily varies from time to time. Many transactions are upheld now which a

former generation would have avoided as contrary to the supposed policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion.

31. Further, in the case of *Maxim Nordenfelt Guns and Ammunition Company v. Nordenfelt*, reported in (1893) 1 Ch. 630 at p. 661 of the report, Lord Justice Bowen has said:--

Rules which rest upon the foundation of public policy, not being rules which belong to the fixed or customary law, are capable, on proper occasion, of expansion or, modification. Circumstances may change and make a commercial practice expedient which formerly was mischievous to commerce.

32. The social values and interests of the age are of pivotal importance on the question of public policy and even in construing the expression "reasonable restriction" used in Article 19(5) of our Constitution the Supreme Court took them into consideration in the case of *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, of the report, in the following terms:--

The criteria for determining the degree of restriction on the right to hold property which would be considered reasonable, are by no means fixed or static, but must obviously vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. The tests, therefore, evolved by communities living in sheltered or placid times, or laid down in decisions applicable to them can hardly serve as a guide for the solution of the problems of post-partition India with its stresses and strains arising out of movements of populations which have had few parallels in history. If law failed to take account of unusual situations of pressing urgency arising in the country, and of the social urges generated by the patterns of thought-evolution and of social consciousness which we witness in the second half of this century, it would have to be written down as having failed the very purpose of its existence. Where the legislature fulfils its purpose and enacts laws, which in its wisdom, are considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole.

33. This brings me to "The nature of the Judicial Process" of Mr. Justice Cardozo whose vast knowledge has been crystallized at pp. 112-113 of this treatise in the following terms:--

....logic and history, and custom, and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the

law. Which of these forces shall dominate in any case must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired. One of the most fundamental social interests is that law shall be uniform and impartial..... But symmetrical development may be bought at too high a price. Uniformity ceases to be a good when it becomes uniformity of oppression. The social interest served by symmetry or certainty must then be balanced against the social interest served by equity and fairness or other elements of social welfare. These may enjoin upon the judge the duty of drawing the line at another angle, of staking the path along new courses, of making a new point of departure from which others who come after him will set out upon their journey. If you ask how he is to know when one interest outweighs another, I can only answer that he must get his knowledge just as the legislator gets it, from experience and study and reflection; in brief, from life itself. Here, indeed, is the point of contact between the legislator's work and his.

34. And this is not *lex scripta* but *lex non scripta* the "judge-made law" of each and every civilized country. The changing condition of the society changes the concept of public policy and the law changes with the changing society. "Hire and tire" no longer governs the relationship between the employees and the workmen of our country. Land-reform legislations have put a death-nell to the feudal hierarchy of the society. The planned economy of our country is of pivotal importance on the question of public policy. The State has entered into the arena of commerce. The social welfare policies and legislations have opened the floodgate of public benefit. The principles of public policy, therefore, cannot be confined to the nine pigeon-holes of my revered Professor nor to the *stare decisis*. And this Court is not a mere rubber stamp nor the public policy is the monopoly of any Legislature.

35. And if due to some unwanted stretches and strains the Legislature is unable to declare what is opposed to public policy of our country the Court must do it, for Sir Henry Maine, at p. 51 of "Grant Duff", says this :--

.....if the legislature does not legislate the courts of justice will have to legislate; for indeed legislation is a process which perpetually goes on through some organ or another wherever there is a civilized government and which cannot be stopped

36. And here there is no scope for any judicial vacillation, for the Common Law is a judicial legislation and its evolution cannot be arrested in a changing society where there is a constant conflict of social values and interests and which one shall prevail over the other is for the Court to determine, for the Common-Law, in the words of Bentham, is a "judge-made law" of each and every country and it "is the judges", says he, "that make the common law" at p. 235 of *Works v.* Hence, I am unable to accept the contention of Mr. Ghose and hold that the Court is not powerless to invent a new head of public policy on a changed social circumstances of our society.

37. My field is now clear to deal with contentions of Mr. Sen, I will start by saying that a contract, unless it is injurious to the society or has a general tendency to harm the society, or is otherwise unenforceable must be enforced, for the Rule is "Pacta Sunt Servant". It is also an elementary rule of law that no one shall be allowed to pollute the fountain of justice and no Court shall ever assist any one who seeks to enforce an agreement which is harmful to the community or which has a general tendency to harm the society. In the case of *Egerton v. Brownlow*, reported in (1853) 4 H.L.C. 1, this principle of public policy was not allowed to be perished by the House of Lords and at p. 196 of the report, it has been said by Lord Truro that public policy is a "principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against the public good."

38. A party seeking to avoid his liability under an agreement on the ground of public policy must satisfy the Court about its injurious character or its harmful tendency. He must also show "that taking that class of contract as a whole, the contracting parties will generally in a majority of cases, or at any rate, in a considerable number of cases be exposed to a real temptation by reason of the promise to do something harmful, i.e., contrary to public policy; and it is likely that they will yield to it, "and it is not enough for him to show" that it affords a motive to do wrong" but he must also establish to the complete satisfaction of the Court "that such contract generally affords a motive and that is likely to be effective". And this law, has been laid down by Lord Atkin in *Fender's* case at p. 13 of the report.

39. It has been, contended by Mr. Sen that suicide is opposed to public policy of our country, for it has been condemned by our Legislature, but Mr. Ghose has disputed it by saying that wagering agreement has also been condemned by our Legislature and yet the Supreme Court did not strike it down as opposed to public policy and hence, according to Mr. Ghose, suicide may be condemned by our Legislature and it may be a reprehensible act and yet it cannot be said to be opposed to public policy of our country. But, I would like to walk on a safer path to find out where the truth lies.

40. The bone of contention of Mr. Sen is that suicide is an anti-social act for the Legislature has condemned it and, therefore it is opposed to public policy. But, I am not impressed by it, for there are many anti-social elements whose presence in the society, by itself, is harmful to the community and sooner they would slaughter themselves it would be better for our society. But, at the same time I must make it clear that I am not concerned with any such abstract or general propositions of Mr. Sen, but with this particular question namely whether a life policy containing a suicide clause is itself harmful to the society or it has a general tendency to harm the community, as already indicated.

41. Suicide clause in a life policy is not a stranger to the law of life insurance. It is a common knowledge that the rate of premium is calculated by the insurers upon the average mortality of people by taking into consideration the cases of

suicide in a particular country. The life policies are generally taken out by common people with a view to make suitable provisions for future. It is also a recognized form of security in the commercial world. Then, on what principle it can be said to be harmful to the society to take out a life policy with a suicide clause is beyond my conception of social values and interests and, therefore, the contention of Mr. Sen, so far as I am concerned, must fail.

42. The next question is whether suicide clauses promote a general tendency to commit suicide to benefit the estate of the assured. Human instinct for self-preservation, natural love, and affection for the dear and near ones are far more stronger motive to live with the beloveds than to confer a material benefit on them by putting an end to one's own life. Further, the Court is not concerned with a fraudulent life-assured but with the general body of life-assureds and, therefore, it is too fanciful even to dream of any such general tendency, for we do not live in such a mad-house that we would be tempted to commit suicide with a view to leave a legacy of litigation for our near and dear ones.

43. Suicide may be a reprehensible act to the moralists, but I am not concerned with any such morals in the case as pointed out by the Supreme Court in Gherulal's case at pp. 797-98 of the report. Hence, for all these reasons, I hold that the suicide is not such a heinous act that it can be said to be opposed to public policy of our country and, therefore, the Insurers are unable to non-suit the wife due to the self-inflicted death of her husband.

44. Further, suicide may be a wrongful act, but the wife is not a wrongdoer nor she is standing in the shoes of her husband as contended by Mr. Sen. She is not a joint-tortfeasor with her husband. Wrongful act, if any of her husband cannot be attributed to her. There is nothing on the record even to suggest that she had ever asked her husband to commit suicide with a view to recover the assured sums from the Insurers. She is a party to these contracts and the Insurers have expressly agreed to pay her on the death of her husband without protecting themselves against her self-inflicted death if it takes place after the expiry of one year from the dates of these policies. She is claiming these sums on her own independent right under these two contracts and not in her capacity as the legal representative of her deceased husband. And this is the complete answer to the last defence of the Insurers based on the highest principle of public policy namely that no wrongdoer should be permitted to take advantage of his own wrong.

45. In the premises, my answer, to issue No. 4 is in the affirmative and it is in the negative to the Issues Nos. 2 and 3.

46. The assured sum of Rs. 20,000/- is payable to the plaintiff "without interests" is the agreement contained in the policies and therefore she is not entitled to any interests. The Insurers have admitted, through Mr. Sen, that they have received Rs. 1,109.90 P. as advance premium from the plaintiff and her husband and for this reason the first issue was deleted at the instance of the Insurers, and

therefore my answer to the last issue is that the plaintiff is entitled to Rs. 21,109.90 P. from the Insurers. Accordingly, there will be a decree for Rs. 21,109.90 P. in favour of the plaintiff, but I am not inclined to award any costs against the defendant in view of the complex questions of first impression involved in this action. The operation of this decree will remain stayed for three months from to-day, as desired by Mr. Sen.