

EDITORIAL BY INVITATION

**The Endgame of Section 309?
An Appeal for Decriminalisation of Suicide**

Ng Yin Ping^{1,2}, Ravivarma Rao Panirselvam^{1,3}

¹**Suicide Prevention Research Malaysia (SUPREMA), Malaysia**

²**Hospital Pantai Penang, Malaysia**

³**Hospital Bintulu, Sarawak, Malaysia**

According to the World Health Organisation (WHO), nearly 800 000 people lose their lives each year to suicide [1]. This translates to one loss of life every 40 seconds. For each loss of life, approximately 20 others attempt suicide [1].

The prevalence of suicide in Malaysia is reported to be 6 to 8 per 100,000 population in a systematic review conducted by Armitage and team (2015) [2] while the Ministry of Health's National Suicide Registry Malaysia (NSRM) [3] reported a much lower, likely under-reported figure of 1.18 per 100 000 population. Although the NRSRM is currently inactive after 2010 due to funding issues, the prevalence of suicide-related symptoms as reflected in the National Health Morbidity Survey (NHMS) reports are concerning. In 2011, the NHMS reported that there were 1.7% who had suicidal ideation, 0.9% with suicide plans and 0.5% who had attempted suicide [4]. In the more recent 2017 NHMS report, nearly 7% of Malaysian adolescents were found to have attempted suicide [5].

Suicide is defined as a voluntary and intentional act to end one's own life. It is legally defined as 'a wilful and voluntary act of a person who understands the physical nature of the act, and intends by it to accomplish the result of self-destruction' [6].

In Malaysia, a suicide attempt is currently seen as a crime which is punishable by jail term or fine or both.

Section 309 of the Malaysian Penal Code states that '*Whoever attempts to commit suicide, and does any act towards the commission of such offence; shall be punished with imprisonment for a term which may extend to one year or with fine or with both*' [7].

In March 2017, a 24-year old lady was charged in court a few days after she attempted to end her life. She was sentenced to a fine of RM2000 or 3 months jail [8]. Later in the same year, a Rohingya teenager was arrested and sentenced to 3 months of jail under the same charge when he tried to harm himself during a protest at the Myanmar Embassy in Kuala Lumpur [9].

In the recent years, there have been calls by policymakers and mental health professionals alike for suicidal attempts to be decriminalized. Last year, the Malaysian Psychiatric Association together with Laman Minda released a statement calling for 'unified policy action by Parliament and for the 'archaic' law criminalizing suicide to be repealed' [10]. The current views posit that a suicide attempt is a cry for help by a person experiencing severe psychological distress

[11]. Instead of litigation and punishment, the focus should be to facilitate access to appropriate care in a professional and sensitive manner.

According to the World Health Organisation, at least 59 countries have decriminalized suicide [12]. Attempted suicide is decriminalized in North America, all of Europe, most of South America and some parts of Asia. Even United Kingdom, of which the British Common Law formed the basis of our Penal Code, decriminalized suicide in 1961 [13] while India, which shares a similar penal code to Malaysia, recently decriminalized suicide in 2014 [14]. Steps to decriminalize suicide attempts have also begun in Singapore early this year as part of its Penal Code reforms [15]. On the other hand, there are 25 independent countries (including Malaysia) that still hold specific laws and punishments for attempted suicide [16].

Should Malaysia decriminalize suicide attempts?

In order to answer this, it is important to understand why suicide was considered to be a criminal offence in the first place.

Section 309 of Malaysia's Penal Code, which is in *pari materia* with the Indian Penal Code, was enacted in 1936 based on the British Common Law approach [7]. The British Common Law was in turn heavily influenced by religious beliefs which held that suicide is sinful or wrong as it is an offence against God – after all, life is given and determined by God and the taking one's own life is against the will of God [17]. This view is not dissimilar from most religious teachings practiced in Malaysia. In addition, criminalizing and punishing one for attempting suicide was intended as a

deterrent effect to others who might be contemplating suicidal behaviour [16].

Does punishing suicidal attempts help to reduce suicide?

Most authorities think not and neither does the evidence support it. Mishara and Weisstub (2016) reviewed the suicide rates of 23 out of 25 countries which criminalized suicides or punished attempted suicides; and concluded that the suicide rates were not higher or lower when compared to other countries, nor did the change in suicide rates differ from the rest of the world [16]. This shows that the punishing those who have attempted suicides did not help reduce suicides.

In addition, it is important to understand the factors influencing suicidal behaviour. Suicidal behaviour is not caused by a single factor, but rather, a complex interaction of many underlying risk factors. These include a previous suicide attempt, the presence of any mental health condition(s), harmful use of substances, hopelessness and psychosocial stressors [1]. Among those who have lost their lives to suicide or have attempted suicide, at least 90% were found to have at least one mental health condition [18, 19]. Having said that, it does not mean that all of those who have attempted or died by suicide have a diagnosable mental disorder [20]. What we do know is that the majority of those who do attempt suicide or engage in self-harm are in distress and often ambivalent about dying [11]. These individuals who attempt suicide often see it as an endpoint to their suffering as they are not able to see any other way out, rather than intentionally going against religious precepts or cultural values.

Punishing those who have attempted suicide with legal action may worsen the suffering

of people who are already in crisis [16]. Such punishment which is aimed at bringing behavior change via aversion, is served on people who obtain no joy but only suffering from the very act that they are being punished from. For in most parts, it may increase the stigma surrounding mental health and suicide even further and deter people from seeking the help that they truly need. For example, individuals who are undergoing litigation may be discouraged from disclosing their suicidal thoughts, which may for a greater part be an organic response to an illness or crisis. Indeed, this has been recognised as one of the key barriers to suicide prevention efforts [1]. In addition, Mishara and Weisstub noted that there is currently no empirical evidence to support the notion that the threat of imprisonment produces a preventive effect on suicidal attempts [16]. Furthermore, prosecuting those who have attempted suicide would incur more costs for the government.

Would decriminalizing suicides encourage more suicide attempts?

According to Mishara and Weissman, to date, there is no data which indicates that decriminalization increases suicides [16]. On the other hand, the rates tended to decline after decriminalization of suicide. The authors further cautioned that decriminalization may lead to an increase in reporting of suicides once the fear of legal implications for suicide is removed [16]. This may be one of the reasons for the increase in the mean 5-year official suicide rates in 7 countries (Canada, England & Wales, Finland, Hong Kong, Ireland, New Zealand and Sweden) post-decriminalization of suicide although the reasons for this were cited as unclear [21]. Lester conducted 2 other 20-year linear time-series evaluation in Canada [22] and New Zealand [23] and

found no increase in suicide rates after suicide was decriminalized. Osman and team (2017) reported similar findings in that there was no significant rise in suicide deaths after decriminalization of suicide in Ireland in 1993. Instead, they found that the rates of 'undetermined death verdict' fell significantly following the decriminalization [24].

We can see from the evidence above that decriminalizing suicide attempts generally do not worsen suicide rates. However, this alone is not sufficient to reduce or prevent suicides. At present, there are some provisions within the current Mental Health Act that facilitate access to mental health services for those who are in crisis [25] even without any need for Section 309. Law enforcers and front liners should be empowered to utilise these provisions to refer those in need for appropriate care.

Apart from that, investing in the nation's mental health and National Suicide Prevention Strategy would go in a long way to preventing suicides. Examples include equipping first aid responders to provide crisis intervention, setting up mobile crisis intervention services within the community to cater to people who may present in acute crisis and providing a clear help-seeking pathway to link those who have been identified by these crisis intervention teams to receive immediate help from trained mental health professionals at designated centres. This should be carried out in tandem with other universal suicide prevention measures such as reducing access to the means of suicide, ensuring responsible media reporting of suicide related news and reducing stigma related to help seeking via mental health education and promotion activities [1].

So, should Malaysia decriminalize suicide attempts?

Yes and it is clear that from the evidence above that decriminalization of suicide attempts is the way forward. Criminalizing suicide attempts have not reduced suicides but may further deter or delay people in crisis from the support and help they truly need. For the year 2019, the World Mental Health Day carries the theme of ‘Suicide Prevention’, while the theme for World Suicide Prevention Day is ‘Working Together to Prevent Suicide’. Let us together support the call to end the criminalization of suicide attempts. It is encouraging that efforts have already been made by the relevant government agencies in engaging diverse stakeholder perspectives in initiating the discussion on this issue. Thus, it is hopeful that all relevant stakeholders can collaborate effectively so that there will be a concerted effort in realising and implementing decriminalization of suicide successfully and sustainably in Malaysia.

Acknowledgements

We would like to thank the following individuals and organization for their insights and contribution: Professor Emeritus Dr. Maniam Thambu, Associate Professor Dr. Chan Lai Fong, Peh Kai Shuen, Malaysian Psychiatric Association and Laman Minda.

About SUPREMA

Suicide Prevention Research Malaysia (SUPREMA) is a diverse group of multidisciplinary researchers registered with the Faculty of Medicine in UKM aspiring to reduce suicides via improved translational research.

References

- [1] Saxena S, Organization WH, Krug EG, Chestnov O. Preventing Suicide: A Global Imperative: World Health Organization; 2014.
- [2] Armitage CJ, Panagioti M, Abdul Rahim W, Rowe R, O'Connor RC. Completed suicides and self-harm in Malaysia: a systematic review. *Gen Hosp Psychiatry*. 2015;37(2):153-65. Epub 2015/02/01. doi: 10.1016/j.genhosppsych.2014.12.002. PubMed PMID: 25636361.
- [3] Ali NH, Zainun KA, Bahar N, Haniff J, Hamid AM, Bujang MAH, et al. Pattern of suicides in 2009: Data from the National Suicide Registry Malaysia. *Asia-Pacific Psychiatry*. 2014;6(2):217-25. doi: 10.1111/j.1758-5872.2012.00227.x.
- [4] (IPH) IoPH. National Health and Morbidity Survey 2011 (NHMS 2011). In: (IPH) IoPH, editor. Kuala Lumpur: Institute of Public Health (IPH); 2011.
- [5] (IPH) IoPH. National Health and Morbidity Survey Adolescents. . Kuala Lumpur: Institute of Public Health; 2017.
- [6] NIMICK ET AL. V. MUTUAL LIFE INS. CO., 10,266 (1871).
- [7] Act 574 Penal Code, (2015).
- [8] Bernama. Woman fined RM2,000 for attempted suicide. NST Online2017. Available from: <https://www.nst.com.my/news/crime-courts/2017/04/230331/woman-fined-rm2000-attempted-suicide>.

- [9] Tariq Q. Rohingya youth pleads guilty to attempted suicide. The Star Online 2017. Available from: <https://www.thestar.com.my/news/nation/2017/09/13/rohingya-man-pleads-guilty-to-attempted-suicide-burning-himself/>.
- [10] Decriminalising Suicide. [Internet]. 2018
- [11] Battin MP. The death debate: Ethical issues in suicide: Prentice Hall; 1996.
- [12] Organization WH. World health statistics 2016: monitoring health for the SDGs sustainable development goals: World Health Organization; 2016.
- [13] Kelly C, Dale E. Ethical perspectives on suicide and suicide prevention. *Advances in Psychiatric Treatment*. 2011;17(3):214-9. Epub 2018/01/02. doi: 10.1192/apt.bp.109.007021.
- [14] Varshney M, Gupta R, Balhara YP. Yes, India has done it: Decriminalization of suicide in India. *Asian J Psychiatr*. 2015;17:103. Epub 2015/08/09. doi: 10.1016/j.ajp.2015.07.005. PubMed PMID: 26253554.
- [15] Kwang K. Sweeping changes proposed to Singapore Penal Code; attempted suicide to be decriminalised 2019. Available from: <https://www.channelnewsasia.com/news/singapore/singapore-attempted-suicide-to-no-longer-be-crime-11229108>.
- [16] Mishara BL, Weisstub DN. The legal status of suicide: A global review. *Int J Law Psychiatry*. 2016;44:54-74. Epub 2015/09/17. doi: 10.1016/j.ijlp.2015.08.032. PubMed PMID: 26375452.
- [17] Biggar N. *Aiming to kill: The ethics of suicide and euthanasia*. Cleveland: Pilgrim Press; 2004.
- [18] Barraclough B, Bunch J, Nelson B, Sainsbury P. A hundred cases of suicide: clinical aspects. *Br J Psychiatry*. 1974;125(0):355-73. Epub 1974/10/01. PubMed PMID: 4425774.
- [19] Appleby L, Shaw J, Amos T. National Confidential Inquiry into Suicide and Homicide by People with Mental Illness. *Br J Psychiatry*. 1997;170:101-2. Epub 1997/02/01. PubMed PMID: 9093494.
- [20] Milner A, Svetcic J, De Leo D. Suicide in the absence of mental disorder? A review of psychological autopsy studies across countries. *Int J Soc Psychiatry*. 2013;59(6):545-54. Epub 2012/05/15. doi: 10.1177/0020764012444259. PubMed PMID: 22582346.
- [21] Lester D. Decriminalization of suicide in seven nations and suicide rates. *Psychol Rep*. 2002;91(3 Pt 1):898. Epub 2003/01/18. doi: 10.2466/pr0.2002.91.3.898. PubMed PMID: 12530739.
- [22] Lester D. Decriminalization of suicide in Canada and suicide rates. *Psychol Rep*. 1992;71(3 Pt 1):738. Epub 1992/12/01. doi:

10.2466/pr0.1992.71.3.738.
PubMed PMID: 1454916.

[23] Lester D. Decriminalization of suicide in New Zealand and suicide rates. *Psychol Rep.* 1993;72(3 Pt 1):1050. Epub 1993/06/01. doi: 10.2466/pr0.1993.72.3.1050. PubMed PMID: 8332671.

[24] Osman M, Parnell AC, Haley C. "Suicide shall cease to be a crime": suicide and undetermined death

trends 1970-2000 before and after the decriminalization of suicide in Ireland 1993. *Ir J Med Sci.* 2017;186(1):201-5. Epub 2016/05/18. doi: 10.1007/s11845-016-1468-9. PubMed PMID: 27189711.

[25] Khan NN, Yahya Ba, Abu Bakar AK, Ho RC. Malaysian mental health law. *BJPsych international.* 2015;12(2):40-2. PubMed PMID: 29093848.

Corresponding Author

Ng Yin Ping
Hospital Pantai, Pulau Penang,
Malaysia

Email: pingingfeline@gmail.com