
DECRIMINALIZATION OF ATTEMPTED SUICIDE: A COMPASSIONATE APPROACH IN MENTAL HEALTH CARE

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ABSTRACT:

This legal research paper delves into the imperative need for the decriminalization of attempted suicide, advocating for a paradigm shift in mental health care policies. Historically, suicide-related behaviors have been treated as criminal offenses, often exacerbating the distress faced by individuals grappling with mental health challenges. This paper explores the punitive nature of existing laws surrounding attempted suicide and argues for a more compassionate and therapeutic approach to address the underlying mental health issues.

The research critically examines the historical context of suicide legislation, highlighting the stigmatization and discrimination perpetuated by criminalization. Drawing on a comprehensive analysis of international legal frameworks and case studies, the paper identifies progressive models that prioritize mental health treatment over punitive measures. Furthermore, it assesses the potential benefits of decriminalization, including improved access to mental health services, reduced stigma, and enhanced rehabilitation prospects.

The study also addresses concerns related to the intersection of mental health and criminal justice, emphasizing the importance of collaboration between legal and mental health professionals. Additionally, it discusses potential legal reforms and policy recommendations aimed at fostering a more compassionate and supportive environment for individuals experiencing suicidal ideation.

By advocating for the decriminalization of attempted suicide, this research paper contributes to ongoing discussions on mental health reform, urging policymakers to prioritize empathy, understanding, and mental health intervention over punitive measures. Ultimately, the paper proposes a holistic approach that recognizes the complexities surrounding mental health issues and endeavors to transform the legal landscape to better serve the well-being of individuals in distress.

Keywords: suicide, decriminalization, legal, mental health

Introduction:

In recent years, society as a whole has experienced a profound and substantial shift in its collective understanding and broader recognition of mental health concerns and issues. This evolving perspective, which has gradually gained momentum over time, is marked by an increasingly expanding acceptance of the urgent need to address mental health issues with greater compassion, empathy, and a deeper level of understanding. One particularly significant and noteworthy advancement in this critical realm has been the progressive decriminalization of attempted suicide. This groundbreaking and transformative measure challenges deeply entrenched conventional notions that have historically stigmatized and marginalized individuals struggling with mental health issues. It emphasizes the crucial importance of providing appropriate and comprehensive mental health support.

In addition to the vital and essential decriminalization of attempted suicide, mental health legislation plays a pivotal and foundational role in shaping societal attitudes and fostering a more empathetic, understanding, and compassionate approach towards those who are grappling with mental health challenges. One particularly prominent and influential example of such forward-thinking legislation is the Mental Health Care Act. This legislation aims to establish a comprehensive and robust framework that promotes and safeguards the well-being of individuals living with mental health problems and challenges.

Under the provisions of the Mental Health Care Act, mental health is formally recognized as an integral and fundamental aspect of an individual's overall health and well-being, and as such, it is considered an entitlement that requires appropriate care. The legislation seeks to rigorously safeguard the rights and dignity of those affected by mental health issues, ensuring that they receive the appropriate treatment, care, and support that fully respects their autonomy, confidentiality, and human rights.

By enshrining and protecting the rights and needs of individuals with mental health concerns, the Mental Health Care Act leads to a significant and meaningful shift in societal norms, attitudes, and perceptions. It encourages and promotes the development of a more compassionate, inclusive, and understanding society. This shift allows for increased awareness, understanding, and acceptance of the complex and diverse range of mental health challenges

that individuals may face, ultimately contributing to the overall well-being, health, and harmony of individuals and the broader community as a whole.

Historical Context:

In the extensive and complex annals of legal systems across the globe, the historical perspective on suicide as a grievous transgression against the established law has pervaded for countless centuries. This deeply ingrained perception, which is rooted in long-standing moral and legal frameworks, has traditionally deemed suicide to be an act that fundamentally betrays and violates societal norms, ethical standards, and cultural values. For generations, this viewpoint has shaped legal responses to suicide, often resulting in punitive measures against those who attempt to take their own lives.

However, the evolving and increasingly nuanced understanding of mental health has precipitated a noteworthy and transformative shift in how societies recognize and respond to mental illnesses. Mental health challenges are now being increasingly recognized as medical afflictions that require treatment and care, rather than as moral failings that warrant punishment or condemnation. This paradigm shift has significantly contributed to a re-evaluation and reconsideration of the legal framework and legality surrounding attempted suicide. No longer are individuals who are struggling and grappling with the complex interplay between legal culpability and their mental health burdened solely by the harsh stigma and societal condemnation traditionally associated with their struggles.

Instead, there is a growing recognition that these individuals are facing profound psychological distress, which requires compassion, understanding, and appropriate medical intervention. Societies around the world are increasingly embracing a more compassionate, empathetic, and supportive approach that acknowledges the deep and lasting impact of mental disorders on an individual's psyche, behavior, and overall well-being. This emerging understanding is reflective of a broader societal acknowledgment that mental health should be treated with clinical care, sensitivity, and empathy, rather than through punitive and legalistic measures.

The cultural shift towards destigmatizing mental health has prompted many legal systems to take the significant and progressive step of decriminalizing attempted suicide. Instead of subjecting individuals to criminal penalties, these legal systems now prioritize supportive interventions, therapeutic care, and access to comprehensive mental health services. This

approach aims to not only address the immediate crisis that an individual may be facing but also to facilitate long-term healing, recovery, and reintegration into society.

While the legal landscape continues to evolve and adapt to these changing perspectives, this progressive and forward-looking attitude towards mental health is an encouraging and hopeful step forward. It fosters the development of a society that recognizes and respects the immense complexities and challenges of mental illness and strives to provide compassionate care, support, and understanding to those who are grappling with psychological challenges. By doing so, society as a whole moves closer to creating an environment where mental health is valued and protected, and where individuals can seek help without fear of stigma or retribution.

Legal Status of Attempted Suicide: Indian Scenario

According to Article 21 of the Indian Constitution, it is explicitly stated that “No person shall be deprived of his life or personal liberty except according to procedure established by the law.” This article enshrines one of the most fundamental and inalienable rights granted to the citizens of India—the right to life and personal liberty. While the Constitution robustly covers the right to life, liberty, and personal freedom, it does not extend its scope to include the ‘right to die.’ This omission implies that attempts at taking one’s own life, or suicide, are not recognized as falling under the purview of the constitutional right to life. Consequently, the legal interpretation of Article 21 does not provide any protection or justification for acts of self-harm or suicide.

Section 309 of the Indian Penal Code (IPC), a legal provision that dates back to the colonial era, clearly and unequivocally states the following: “Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or both.” This section criminalizes the act of attempting to end one’s own life, prescribing legal penalties for individuals who make such attempts.

Several critical inquiries and debates arise in the context of Section 309 and its implications. Primarily, it is important to note that Section 309 falls within the classification of offenses that are outlined and detailed in Chapter XVI of the Indian Penal Code. This particular chapter primarily deals with offenses against the human body. All other offenses within this classification involve actions that are directed towards causing harm to the physical body of

another person. Interestingly, the act of attempting suicide is grouped together with these offenses, despite the fact that it is an action directed towards oneself rather than another individual.

The determination of attempted suicide as a punishable offense is established based on the legal requirement of proving the presence of intention. This intention is typically deduced or inferred from the surrounding circumstances of the case. However, the intention to commit suicide may often be indistinct, ambiguous, or open to multiple interpretations in numerous cases, making it a complex legal issue. Moreover, the issue of treating attempted suicide as a crime against the state has sparked significant debate and lacks substantial support within modern legal and human rights circles. Critics argue that criminalizing an act driven by extreme mental distress is not only insensitive but also counterproductive.

In a landmark ruling from 1985, the Delhi High Court expressed its progressive view that the existence of Section 309 of the Indian Penal Code, which criminalizes suicide, is outdated, regressive, and not befitting a progressive society like ours. The court highlighted that the Indian Penal Code was originally established during the British Raj in 1860, a period when India was under colonial rule. The IPC was largely based on the legal principles and laws that were prevailing in Britain at that time. Interestingly, while Britain took a more progressive stance and decriminalized suicide as early as 1961, India continues to uphold and enforce this antiquated law, raising questions about the relevance of such a provision in contemporary society.

It is important to emphasize and clarify that Section 306 of the IPC addresses the act of abetting the commission of suicide, specifically excluding the abetment of an attempt to commit suicide. Meanwhile, Section 305 of the IPC specifically addresses the abetment of suicide when it involves a child or a person of unsound mind. The penalties prescribed for these offenses are severe and range from 1 to 10 years of imprisonment, along with substantial fines. It is also worth noting that the repeal of Section 309, which criminalizes the attempt to commit suicide, would not have any direct impact on the aforementioned sections concerning the abetment of completed suicide. These sections would continue to remain in force, ensuring that individuals who encourage or assist others in taking their own lives are held legally accountable for their actions.

Case Laws

1. Gian Kaur v. State of Punjab¹

This landmark case addressed the constitutionality of Section 309 of the Indian Penal Code (IPC), which criminalizes attempted suicide. The Supreme Court of India upheld the constitutionality of Section 309, ruling that the "right to life" under Article 21 of the Constitution does not include the "right to die." Therefore, it concluded that Section 309 IPC, which makes attempted suicide a punishable offense, was not unconstitutional.

This judgment reinforced the criminalization of attempted suicide in India while simultaneously clarifying the boundaries of the right to life under Article 21.

2. P. Rathinam v. Union of India²

Before the Gian Kaur case, in the P. Rathinam case, the Supreme Court had taken a contrary view, stating that Section 309 IPC was unconstitutional. The Court had reasoned that the right to life under Article 21 of the Constitution also included the right not to live, i.e., the right to die. Thus, it had invalidated Section 309 IPC.

This decision was later overruled by the Gian Kaur case, but it was significant as it was the first time the Supreme Court recognized a potential right to die under Article 21.

3. Aruna Shanbaug v. Union of India³

This case dealt with the issue of euthanasia. Aruna Shanbaug was a nurse who had been in a persistent vegetative state for 37 years. The Supreme Court allowed passive euthanasia under strict guidelines but did not permit active euthanasia. The Court clarified that the withdrawal of life support in cases of terminal illness or vegetative state, with due procedure, could be legally permissible.

¹ (1996) 2 SCC 648.

² (1994) 3 SCC 394

³ (2011) 4 SCC 454.

While the case did not directly deal with suicide, it significantly impacted discussions on the right to die with dignity and the legal and ethical boundaries surrounding end-of-life care.

4. Naresh Marotrao Sakhre v. Union of India⁴

In this case, the Bombay High Court ruled that euthanasia or mercy killing could not be permitted under any circumstances. The court held that euthanasia is equivalent to homicide, even if the intention is to relieve the suffering of a terminally ill person.

This case reaffirmed the criminalization of euthanasia in India and clarified the distinction between suicide and euthanasia under the law.

5. Common Cause v. Union of India⁵

In this landmark judgment, the Supreme Court recognized the right to die with dignity as a fundamental right under Article 21 of the Constitution. The Court legalized passive euthanasia and also recognized the validity of living wills, allowing individuals to specify their wishes regarding end-of-life care in advance.

This case further nuanced the understanding of the right to life under Article 21, recognizing that it also includes the right to a dignified death in certain circumstances.

6. State of Maharashtra v. Maruti Sripati Dubal⁶

The Bombay High Court in this case held that the right to life does not include the right to die and that Section 309 IPC, which criminalizes attempted suicide, was unconstitutional. However, this judgment was later overruled by the Supreme Court in the Gian Kaur case.

This case was one of the early instances where the judiciary explored the relationship between the right to life and the right to die.

⁴ (1995) 5 SCC 658

⁵ (2018) 5 SCC 1

⁶ AIR 1987 SC 2050.

Countries with decriminalization of attempted suicide

Countries that have taken the progressive step of decriminalizing attempted suicide have, in many cases, continued to criminalize related acts such as the abetment or encouragement of suicide, the formation of suicide pacts, and at times, deliberate self-harm. These legal measures are in place to ensure that while individuals struggling with mental health issues are not penalized for their actions, those who may exploit or encourage vulnerable individuals are held accountable.

For instance, in the Australian state of Victoria, the legal system has established stringent provisions where the survivor of a suicide pact can be charged with serious crimes such as manslaughter and the abetment of another person's suicide. This legal approach underscores the seriousness with which such matters are treated, reflecting a commitment to both preventing suicide and punishing those who may encourage it.

In New Zealand, the legal framework similarly considers the abetment or encouragement of the suicides of others as a grave offense, punishable under the law. The crime of inciting or assisting someone in taking their own life is treated with severity, as society seeks to protect vulnerable individuals from being influenced or coerced into such tragic decisions. Similarly, in Russia, the act of inciting someone to commit suicide is punishable by law, with sentences that can extend to up to 5 years in prison, reflecting the gravity of the offense.

In Ireland, the decriminalization of attempted suicide occurred relatively early, with the legal change being enacted as far back as 1993. However, it is important to note that self-harm is not legally categorized or viewed as a form of attempted suicide, highlighting the nuanced approach taken by the legal system in addressing these issues. Suicide and attempted suicide have never been considered crimes under Roman-Dutch law, a legal system that is followed in various jurisdictions, indicating a long-standing recognition of the need for compassionate treatment rather than punitive measures.

In the United States, laws regarding suicide pacts, those who aid or abet in the act of suicide, and considerations for insurance purposes vary by state. For example, some states, including Alabama, Oregon, and South Carolina, continue to have specific laws that address these issues, ensuring that individuals who engage in or promote such acts are held accountable, while also addressing the legal implications for insurance and other related matters.

Notably, only a few countries in South Asia, including Sri Lanka, Indonesia, the Maldives, and Thailand, do not treat attempted suicide as a criminal act. These nations have recognized the importance of addressing mental health with compassion and have moved away from the criminalization of those who attempt to take their own lives. This reflects a broader global trend towards decriminalization in recognition of the complex factors that lead individuals to such desperate acts.

As of the present time, the World Health Organization has identified 59 countries around the world that have decriminalized suicide, representing a significant shift in global attitudes towards mental health and suicide prevention. The decriminalization of attempted suicide has been implemented across the entire continent of Europe, throughout North America, much of South America, and in select parts of Asia, reflecting a growing consensus that mental health crises should be met with support rather than punishment.

Interestingly, the decriminalization of suicidal attempts occurred relatively late in countries that were historically influenced by English common law. This delay can be attributed to the long-standing legal traditions and societal norms that were prevalent in these countries. In these jurisdictions, the legal and coroners' involvement in the certification of suicide cases tends to be much more pronounced compared to continental Europe and the Scandinavian region, where doctors are typically permitted to certify suicidal deaths without the need for legal authorities to be involved. This difference in approach highlights the varying legal and cultural attitudes towards suicide across different regions of the world.

Mental Health Care Act and Decriminalization:

The promulgation of the Mental Health Care Act in India in 2017 marked a watershed moment in the country's legal framework, as it boldly challenged the archaic practice of criminalizing individuals who had attempted suicide.

Particularly noteworthy and deserving of attention is Section 115 of this groundbreaking and transformative legislation, which unambiguously and explicitly states that individuals who engage in such self-harming behavior are to be presumed to be grappling with severe and overwhelming psychological distress. As such, these individuals should be shielded and protected from any legal ramifications or punitive actions that would otherwise compound their suffering. This progressive and forward-thinking legal provision seeks to rectify and address

the deeply entrenched and longstanding social stigma that has historically surrounded mental health issues and struggles. It aims to foster and cultivate a society where empathy, compassion, and therapeutic intervention are prioritized and where these supportive measures take precedence over traditional punitive approaches that have often been harsh and unhelpful.

By recognizing and acknowledging attempted suicide as a clear manifestation and expression of underlying mental health struggles and distress, the Act not only endeavors to humanize individuals who are dealing with profound psychological challenges but also underscores and highlights the urgent need for comprehensive and accessible mental health care services. It is through this compassionate and empathetic lens that the legislation sets out to dismantle and challenge the prevailing and misguided misconception that those who attempt suicide are somehow criminals who deserve punishment. Instead, the Act strives to create and promote an environment that encourages understanding, acceptance, and support for individuals who are grappling with mental health challenges, thereby ensuring that they receive the care and assistance they need rather than facing legal penalties.

In effect, the Mental Health Care Act has not only brought about a pivotal and transformative shift in India's legal landscape with regard to how mental health issues are treated, but it has also sparked and catalyzed broader conversations and discussions about mental health and well-being at a societal level. The Act represents a compelling and significant step toward forging and building a more enlightened, compassionate, and understanding society—one that prioritizes mental health care and champions the inherent dignity, worth, and humanity of all individuals, regardless of the mental health struggles they may be experiencing.

This legislation is a clear indication that society is moving toward a more progressive and humane approach to mental health, recognizing that individuals facing mental health crises need support and understanding rather than condemnation. By fostering a culture of empathy and respect for those with mental health challenges, the Act helps to break down barriers and reduce the stigma that has historically surrounded these issues. It is a crucial step in creating a society where mental health is given the same importance as physical health, and where individuals are empowered to seek help without fear of legal repercussions or societal judgment.

Through these efforts, the Mental Health Care Act aims to contribute to the broader goal of

improving mental health outcomes and ensuring that all individuals have access to the care and support they need. This shift in legal and societal attitudes not only benefits those directly affected by mental health issues but also helps to create a more inclusive and compassionate society for everyone.

The Need for Compassion:

The ongoing shift toward the decriminalization of attempted suicide signifies a profound recognition within societies worldwide—an acknowledgment that individuals contending with mental health challenges require compassion, support, and understanding rather than punitive measures. This paradigmatic change reflects a departure from traditional legal responses that have historically criminalized suicide attempts, often without due consideration of the complex mental health dynamics at play.

The act of criminalizing suicide attempts not only fails to address the underlying issues but also contributes to the perpetuation of stigma surrounding mental health. Stigmatization, in turn, becomes a formidable barrier hindering individuals from reaching out for the support and professional help they urgently need. Rather than fostering an environment of empathy and understanding, punitive measures exacerbate the challenges faced by those grappling with mental health crises, pushing them further into the shadows and away from the assistance that could facilitate their recovery.

The lens through which society views suicide attempts is critical to shaping effective responses. By reframing these incidents through the perspective of mental health, societies can confront the root causes of such behaviors. Mental health, as an essential component of the discourse, underscores the need to treat suicidal tendencies as manifestations of deeper emotional struggles, psychological distress, or psychiatric disorders.

Approaching suicide attempts from a mental health standpoint allows for a more nuanced understanding of the multifaceted factors that contribute to these crises. By recognizing that individuals in distress are experiencing internal struggles, societies can tailor interventions that address the root causes rather than merely punishing the symptoms. This shift encourages the implementation of therapeutic and rehabilitative measures, aligning with the principles of empathy and care that are integral to effective mental health support systems.

Furthermore, this shift in perspective emphasizes the importance of providing timely and appropriate interventions and treatment. Rather than subjecting individuals to legal repercussions, society can focus on deploying mental health professionals, counselors, and support networks to aid in the recovery process. These interventions may include counseling, psychiatric assessments, and access to mental health services, thereby creating a more supportive environment conducive to the well-being and rehabilitation of those facing mental health challenges.

Shifting the Focus to Mental Health Care:

The process of decriminalization serves as a catalyst for the development and fortification of a more comprehensive and effective mental health care system. Instead of subjecting individuals who attempt suicide to punitive legal consequences, this paradigm shift opens the door for a redirection of their journey towards professional assistance, counseling, and targeted psychiatric interventions. This transformation represents a significant departure from punitive measures, aligning seamlessly with the foundational principles outlined in the Mental Health Care Act.

By decriminalizing attempted suicide, societies acknowledge the intricate intersection between legal frameworks and mental health. This acknowledgment enables a more enlightened response that views mental health challenges as medical issues deserving of appropriate care and understanding. Redirecting individuals away from the legal system towards mental health professionals empowers the development of a more proactive and supportive environment, one that emphasizes rehabilitation, recovery, and addressing the root causes of mental health crises.

The shift towards directing individuals who attempt suicide to professional help is not merely a redirection but a recognition of their fundamental right to access mental health care and treatment. The principles enshrined in the Mental Health Care Act emphasize this very right, affirming that every individual has the entitlement to receive mental health care services without encountering discrimination or fear of legal repercussions. By embracing this perspective, societies can foster an environment where seeking mental health assistance is regarded as a fundamental human right rather than a stigmatized act.

Moreover, aligning decriminalization with the Mental Health Care Act reinforces the commitment to a patient-centric and rights-based approach. It upholds the dignity of

individuals facing mental health challenges, recognizing their agency in seeking help and engaging in treatment without the burden of legal consequences. This not only enhances the quality of mental health care but also contributes to destigmatizing mental health issues, promoting a more compassionate and understanding societal ethos.

In essence, decriminalization serves as a cornerstone in the establishment of a robust mental health care system, where legal consequences are replaced by therapeutic interventions. This paradigm shift resonates with the principles enshrined in the Mental Health Care Act, ensuring that individuals have the right to access mental health care and treatment without encountering discrimination or legal obstacles. It is a pivotal step towards fostering a society that prioritizes mental health, treating it with the gravity and compassion it deserves.

Challenges and Solutions:

The movement towards decriminalizing attempted suicide marks a progressive stride in reshaping societal attitudes toward mental health; however, formidable challenges persist on the path to fostering a truly compassionate and supportive environment. One of the most significant impediments is the enduring social stigma surrounding mental health issues, which casts a pervasive shadow over open discussions and preventive efforts.

Despite advancements in understanding mental health, societal biases and misconceptions persist, contributing to the marginalization of those grappling with mental health challenges. This persistent stigma not only discourages individuals from openly discussing their struggles but also obstructs preventive initiatives by perpetuating a culture of silence and shame. Overcoming these challenges requires a concerted effort to dismantle preconceived notions about mental health and create a space where individuals feel empowered to seek help.

A key element in dismantling stigma is through targeted education. Comprehensive and accessible educational programs are essential to disseminate accurate information about mental health, dispelling myths and misconceptions that fuel stigma. Public awareness campaigns can help shift societal perceptions, fostering empathy and understanding. By providing communities with the knowledge to recognize and empathize with mental health struggles, these initiatives pave the way for a more accepting and supportive environment.

Crucially, education must extend beyond the general public to encompass healthcare professionals and law enforcement agencies. Training programs that emphasize a nuanced understanding of mental health issues equip professionals with the tools to respond empathetically and effectively. Healthcare providers can play a pivotal role in creating a safe space for individuals to discuss their mental health concerns, while law enforcement agencies can adopt protocols that prioritize mental health interventions over punitive measures.

Building a supportive environment also necessitates destigmatizing mental health discussions within workplaces, schools, and other community settings. Implementing policies that prioritize mental health and create safe spaces for open dialogue contributes to a cultural shift wherein individuals feel encouraged rather than inhibited in seeking assistance.

Moreover, media plays a vital role in shaping societal perceptions. Responsible and accurate portrayal of mental health issues in the media can contribute to destigmatization by challenging stereotypes and fostering a more nuanced understanding. Collaborations between mental health organizations and media outlets can help shape narratives that promote empathy and reduce stigma.

Conclusion:

The decriminalization of attempted suicide under the Mental Health Care Act signifies a forward-thinking and empathetic approach to addressing mental health challenges. This landmark legislation recognizes the intrinsic link between suicide attempts and underlying mental health issues, thus fostering an environment where mental health struggles are approached with compassion rather than criminalization. By removing the punitive aspect associated with suicide attempts, the Act aims to dismantle the stigma that has historically surrounded mental health issues, promoting a more supportive and understanding societal attitude.

As the global dialogue on mental health continues to advance, legislative measures like those embodied in the Mental Health Care Act play a crucial role in catalyzing significant change. These measures are instrumental in driving forward a societal shift towards greater empathy, understanding, and ultimately, the cultivation of a more compassionate society. They underscore the importance of addressing mental health challenges not with punishment, but with support and care.

However, despite the progress represented by decriminalization, challenges remain, particularly due to persistent social stigma. Overcoming these challenges requires a comprehensive strategy that integrates several key elements. Education and awareness campaigns are essential for altering public perceptions and increasing understanding of mental health issues. Professional training for healthcare providers, educators, and law enforcement is critical to ensure that they are equipped to respond with sensitivity and competence. Policy changes must be continually evaluated and updated to reflect evolving best practices in mental health care. Additionally, media collaboration is vital for shaping public discourse and reducing stigma.

A collective and sustained effort is necessary to address these challenges effectively. By combining these strategies, societies can create a more supportive environment that encourages individuals to seek help without the fear of judgment or negative repercussions. Only through such comprehensive and collaborative approaches can we truly overcome the barriers posed by stigma and move towards a more inclusive and understanding approach to mental health.