

**TOWARDS THE DECRIMINALISATION OF ATTEMPTED SUICIDE IN KENYA:
DIVERSION AS A RESTORATIVE JUSTICE MECHANISMS**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School

By

Asya Ali Said Hamada

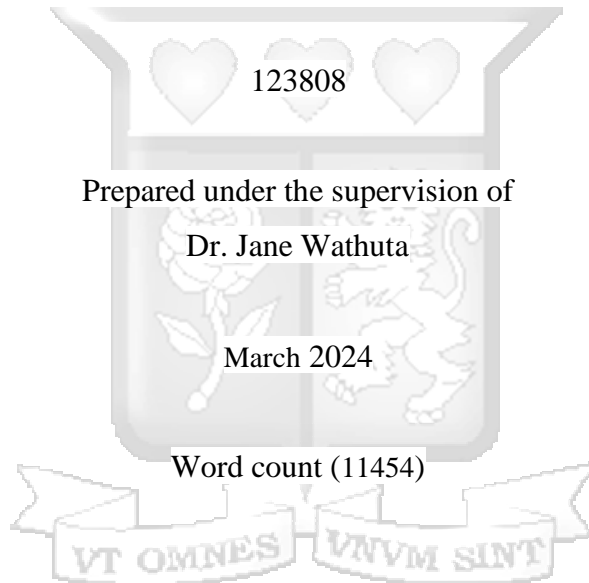


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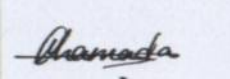
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Declaration

I, ASYA ALI SAID HAMADA do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: 

Date: 18th March 2024

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:  19-03-2024

Dr. Jane Wathuta



LIST OF CASES

Aruna Shanbaug v Union of India, (2011) 4 SCC 454

Gian Kaur v State of Punjab, 1996 AIR 946

Jacqueline Okuta & another v Attorney General & 2 others (2017) eKLR

Maruti Shripati Dubal v State of Maharashtra, (1986) 88 BOMLR 589

MWK & another v Attorney General & 4 others; Independent Medical Lega Unit (IMLU) (Interested Party); The Redress Trust (Amicus Curiae) (Constitutional Petition 347 of 2015) [2017] KEHC 1496 (KLR) (Constitutional and Human Rights) (18 December 2017) (Judgement)

P. Rathinam v Union of India, 1994 AIR 1844

R v Oakes (1986) 1 SCR 103

S v Makwanyane (1995) 3 SA 391 (CC)

State v Sanjay Kumar Bhatia 1985 SCC Del 134

University Academic Staff Union (UASU) v Attorney General & Chief of Staff & another (2018) eKLR

LIST OF LEGAL INSTRUMENTS

African Charter on Human and People Rights

General Comment No.14 on the Highest Attainable Standard of Health the Constitution of Kenya 2010

International Convention on Economic and Social Rights

The Constitution of Kenya 2010

The Ghana Criminal Act

The Indian Penal Code, 1860

The Mental Health Act 2012

The Penal Code, Cap 63 Laws of Kenya

The Penal Code (Amendment) Bill 2021

United Nations Declaration of Human Rights

CHAPTER 1

INTRODUCTION

1.0 Background

The Centre for Disease Control (CDC) defines attempted suicide **as an attempt** where someone harms themselves with **any** intent to end their life, but they do not die as a result of this action.¹ According to the World Health Organization (WHO), 703,000 people die each year as a result of suicide and of these cases, there are even more of those who attempt suicide being projected at least 20 times more frequent than “completed suicides”.² In 2019, the WHO age-standardised report estimated that Africa carried the highest suicide burden at 11.2 per 100, 000 population while the suicide rate in Kenya was estimated at 11.0 per 100, 000 population.³ Research suggests that psychiatric **illness play** a major role in attempted suicide with depression and other mental disorders emerging as significant risk factors for both the youth and adults.⁴

The impact of childhood adversities, including experiences such as sexual or physical abuse, along with substance abuse, stressful life events (such as bereavement, job loss, or relationship breakdown), financial struggles, impending legal issues, and facing or being recently diagnosed with a terminal illness are leading causes for attempted suicide.⁵ Quantitative studies highlight additional risk factors, such as sociodemographic elements (male gender for completed suicides and female gender for non-fatal suicidal behaviour), **younger age**, genetic predisposition, and personality traits like neuroticism as contributing factors too.⁶ Socioeconomic status also plays a

¹ Centers for Disease Control and Prevention, “Facts About Suicide “Suicide Prevention (May 2023) <https://www.cdc.gov/suicide/facts/index.html>

² World Health Organization, “Suicide” WHO (August 2023). <https://www.who.int/news-room/fact-sheets/detail/suicide>

³ World Health Organization (WHO) “Suicide Worldwide in 2019: Global Health Estimates.” WHO, 2021 (<https://www.who.int/publications/i/item/9789240026643>)

⁴ Bertolote JM, Fleischmann A, De Leo D, Wasserman D. Psychiatric Diagnoses and Suicide: revisiting the evidence. *Crisis*, 2004;25(4):147-55..

⁵ Ndeti DM, Khasakhala LI, Mutiso V, Mwayo AW, Suicidality and depression among adult patients admitted in general medical facilities in Kenya, *Ann Gen Psychiatry*, 2010, Edition 9, 7.

⁶ Bitta MA, Bakolis I, Kariuki SM, Nyutu G, Mochama G, Thornicroft G, Suicide in a rural area of coastal Kenya. *BMC Psychiatry*, Edition 18(1), 2010, 267.

role, with low status correlating with increased suicide risk.⁷ Qualitative research in specific regions further identifies poverty, intimate partner violence, family rejection, social isolation, stigma, and chronic physical illness as contributing factors to suicidal behaviour.⁸ This complexity suggests a multifaceted interplay of factors, often interacting or modifying each other, contributing to the understanding of the causes behind both suicide and attempted suicide.

Notwithstanding the above statistics and causes, Attempted Suicide is still criminalized in multiple countries and in especially Low- and Middle-Income countries.⁹ The Criminalization of Attempted suicide can be traced to the early writings and teachings of Saint Augustine who presented the commandment “thou shall not kill” as to include taking one’s own life and this view was adopted in Christian countries¹⁰ and by extension was transferred to African countries during the advent of colonisation.¹¹ Similarly, in Islam, Attempted Suicide is viewed as a sin under Sharia Law.¹² Additionally, some customs and religious communities have perceived and approached an attempt to commit suicide as an abominable act. Ongeru in her paper argues that attempted suicide victims were censored and never got psychosocial support due to abomination.¹³

Based on the foregoing, Attempted Suicide was criminalised to have the impact of deterrence. The Nature and purpose of deterrence in Criminal Law is to deter and recompense to the victim under the rule of law. To discourage future crimes it seeks to create penalties for criminal conduct and to rehabilitate criminals through detention. It delivers justice through punishments that are proportionate to the crime. The criminalization of Attempted Suicide therefore evolved from a crime against religion to one against the state consequently attracting penal sanctions.¹⁴

Present-day scholars in criminal law that interrogate the harshness of imprisonment subjected to persons who attempt to commit suicide make the claim for attempts to commit suicide to be dealt

⁷ Ongeru L, McCulloch CE, Neylan TC, Bukusi E, Macfarlane SB, Othieno C, “Suicidality and associated risk factors in outpatients attending a general medical facility in rural Kenya”.

⁸ Blüml V, Kapusta ND, Doering S, Brähler E, Wagner B, Kersting A. Personality factors and suicide risk in a representative sample of the German general population. PLoS One 201; 8(10).

⁹ Ochuku Brenda, “Centering decriminalization of suicide in low – and middle–income countries on effective suicide prevention strategies” *Frontiers in Psychiatry* 13 (2022).

¹⁰ Christianity, “Assisted Dying” Christian Enquiry Agency <https://www.christianity.org.uk/article/assisted-dying>

¹¹ Mensah Adinkrah, “Anti-Suicide Laws in Nine African Countries: Criminalization, Prosecution and Penalization” *African Journal of Criminology and Justice Studies* 9:1 (2016):279-292

¹² Lester D. Suicide and islam. *Arch Suicide Res.* 2006;10(1):77-97.

¹³ Blüml V, Kapusta ND, Doering S, Brähler E, Wagner B, Kersting A. Personality factors and suicide risk in a representative sample of the German general population. PLoS One 201; 8(10).

¹⁴ Christianity, “Assisted Dying” Christian Enquiry Agency <https://www.christianity.org.uk/article/assisted-dying>

with by psychotic institutions as a matter of public health¹⁵. This view is supported by the fact that such victims are causatively triggered by depression, anxiety, psychosis, and other psychotic risk factors negating the necessary criminal element of men's rea.

In Kenya, Section 226 as read together Section 36 of the Penal Code creates the offence of Attempted Suicide.¹⁶ The punishment is that one is guilty of a misdemeanour and therefore liable to a 2-year imprisonment or fine or both.¹⁷ The creation of this offence and the punishment prescribed can be considered to be contrary to Articles 28, 27, and 43 of the Constitution of Kenya 2010 as it violates the right of the victims of attempted suicide to be treated in dignity and respect, their freedom from non-discrimination, and their right to the highest attainable standard of health. Punishment is suffering, pain, or loss that serves as retribution¹⁸.

It is for the above reasons that proponents of the criminalization of attempted suicide have argued that its criminalization discourages people from committing suicide as a result of the fear of incarceration.¹⁹ However, of the 20 countries where attempted suicide is criminalized, seven countries have had higher rates compared to the global rate pointing to the fact that there might be no correlation between criminalization of attempted suicide and lower suicide rates.²⁰ Accordingly, the criminalization of attempted suicide only serves to further stigmatize the victims through unnecessary prosecutorial processes and further complicate their relationships with family, friends and the community at large.

Restorative justice is defined as a process through which remorseful offenders accept responsibility for their misconduct to those injured and to the community, that, in response, allows the reintegration of the offender into the community.²¹ Restorative justice challenges the assumption underlying the existing criminal justice system that punishment of the offender is sufficient, or even necessary, to restore justice after criminal offences.²² In this sense, the function

¹⁵ Onger L, Mcculloch CE, Neylan TC, Bukusi E, Macfarlane SB, Othieno C, "Suicidality and associated risk factors in outpatients attending a general medical facility in rural Kenya", 413–21.

¹⁶ Sections 226 and 36, Penal Code

¹⁷ Section 36, Penal Code

¹⁸ Merriam Webster Dictionary, 11th edition.

¹⁹ Christianity, "Assisted Dying" Christian Enquiry Agency" <<https://www.christianity.org.uk/article/assisted-dying>>

²⁰ Lew B, Lester D, Mustapha FI, Yip P, Chen YY, Panirselvam RR, Hassan AS, In S, Chan LF, Ibrahim N, Chan CMH, Siau CS, "Decriminalizing suicide attempt in the 21st century: an examination of suicide rates in countries that penalize suicide, a critical review", "BMC Psychiatry". 2022

²¹ Saby Ghoshray, "An Equilibrium-Centric Interpretation of Restorative Justice and Examining Its Implementation Difficulties in America", "Campbell Law Review" 35(3) (2013):287-332.

²² Llelewyn J & Downie J, "Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena for Restorative Justice and A New Path for End Of Life Law And Policy In Canada", "Alberta Law Review" 48:4 (2011):966-985

of restoration of justice is to ascertain what is required by the context and circumstance of the parties to restore relationships where there is equal respect, concern and dignity.²³ This approach can be used to mend the relationships that survivors of attempted suicide had with their families, friends and other community members. Additionally, their application can be used to re-introduce and re-integrate the survivors back into the community as they help in lowering the stigma attached to criminalisation and the isolation that may occur as a result of a conviction.

This method can be put into practice using Diversion. Different definitions exist for diversion; however, it always involves methods of handling individuals in conflict with the law without using formal legal proceedings or trials. Referring attempted suicide victims in conflict with the law to community-based organizations, services, programs, or activities helps avoid the negative consequences of formal legal processes like stigma and a criminal record. Furthermore, diversion produces positive outcomes for victims, aligns with public safety efforts, and has been shown to be cost-efficient.²⁴

In that regard, this paper seeks to investigate the effects of the criminalisation of attempted suicide through Section 226 of the Penal code. It analyses the implications that arise from the criminalisation of the victims, and drawing comparisons from jurisdictions such as India that have since decriminalised similar provisions makes a case for the decriminalisation of the same in Kenya. Lastly, the paper argues that the use of restorative justice mechanisms ingrained in measures such as diversion is a more efficient and dignified way of assisting victims of attempted suicide rather than imposing penal sanctions on them.

1.1 Statement of Problem

Attempted Suicide is criminalised through the application of **Section 226** as read together with Section 36 of the Penal Code. On conviction, one is liable to an imprisonment of not more than

²³ Llewelyn J, & Downie J, “Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena for Restorative Justice and A New Path for End Of Life Law And Policy In Canada”, “Alberta Law Review” (2011):966-985 <<https://works.bepress.com/jennifer-llewellyn/20/>>, <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?params=/context/scholarly_works/article/1894/&path_info=alr_LLEWELLYN.pdf>, <<https://albertalawreview.com/index.php/ALR/article/view/142>>

²⁴ Llewelyn J, & Downie J, “Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena for Restorative Justice and A New Path for End Of Life Law And Policy In Canada”, “Alberta Law Review” (2011):966-985. <<https://albertalawreview.com/index.php/ALR/article/view/142>>

two years or a fine, or both.²⁵ ²⁶The criminalization of attempted suicide is problematic in that it views victims as criminals rather than persons in need on psychological help as causes of suicide are largely psychotic and serves to increase stigma, limit the accuracy of suicide surveillance and reporting and hinders access to mental health services.²⁷

Making attempted suicide a crime results in more negative attitudes towards individuals and limits their ability to fully engage in social, economic, and political activities due to increased stigmatization and discrimination. This is so because **once a person is convicted**, they are already a labelled criminal and as a result may attempt suicide again in a more lethal way to escape the stigma and potential imprisonment.²⁸

Additionally, the criminalization of attempted suicide leads to inaccurate surveillance and reporting of suicide cases thereby placing a hindrance on the collection of numbers that would have been used to make informed policy decisions.²⁹ Deaths from suicide are occasionally categorized as accidents or undetermined deaths in order to prevent potential legal consequences. Further, many victims of attempted suicide are hindered from accessing quality mental health care services exacerbating their conditions and making it difficult for health care providers to be of assistance to these persons.³⁰

The use of Restorative Justice mechanism can be used to effectively deal with cases of attempted suicide. The use of these measures removes the victims of attempted suicide from the traditional criminal justice system and through the use of restorative justice systems, **they are able to**

1.2 Research Objectives

The objectives of the study are as follows:

²⁵ Section 36 of the Penal Code

²⁶UNICEF,

<<https://www.unicef.org/eca/media/27691/file/Five%20Advocacy%20Briefs%20on%20Child%20Justice%20&>>

²⁷ Christianity, “Assisted Dying” Christian Enquiry Agency <https://www.christianity.org.uk/article/assisted-dying>

²⁸ McWilliams ER, Hunter BA. The Impact of Criminal Record Stigma on Quality of Life: A Test of Theoretical Pathways. *Am J Community Psychol.* 2021 Mar;67(1-2):89-102.

²⁹ Ranjan R, Kumar S, Pattanayak RD, Dhawan A, Sagar R. (De-) criminalization of attempted suicide in India: A review. *Ind Psychiatry J.* 2014 Jan;23(1):4-9.

³⁰ Venturo-Conerly KE, Osborn TL, Wasil AR, Le H, Corrigan E, Wasanga C, Weisz JR. Testing the effects of the Shamiri Intervention and its components on anxiety, depression, wellbeing, and academic functioning in Kenyan adolescents: study protocol for a five-arm randomised controlled trial. *Trials.* 2021

1. To analyse the implications of Section 226 of the Penal Code and whether by its application the rights of victims of attempted suicide are violated.
2. To draw comparisons between **multiple jurisdictions** and Kenya on the effects of treating attempted suicide **because of mental illness** rather than a criminal offence.
3. To demonstrate the applicability of restorative justice mechanisms in the Kenyan legal system to deal with cases of attempted suicide.

1.3 Research Questions

This study is based on the following research questions:

1. What are the implications of Section 226 of the Penal Code **violating** the rights of victims of attempted suicide?
2. **What is the effect of treating Attempted Suicide as a mental illness instead of a criminal offence?**
3. **Which restorative justice mechanisms can be applied** in the resolution of cases involving Attempted Suicide?

1.4 Hypothesis

Decriminalizing attempted suicide in Kenya and implementing restorative justice for such cases is likely to improve mental health outcomes, decrease stigma, encourage more accurate reporting of suicides, and boost victims' mental well-being.

1.5 Justification

The criminalisation of attempted suicide offenders is not consistent with provisions of the Constitution and the **African Charter for People's Rights**.

This study will be unique as it advocates for a more humane and constitutional approach to dealing with individuals who attempt to take their own lives; by assessing whether diversion policy guidelines and procedures better deal with attempts to commit suicide.

1.6 Theoretical Framework

1.6.1 The Stigmatisation Theory

According to the Stigmatisation Hypothesis, which is a sociological theory that can explain the impact of Section 226 on attempted suicide victims, stigmatising a particular activity or group of people can reinforce social norms and make people less likely to engage in that conduct or associate with that group. According to the hypothesis, **the legal penalty for attempted suicide in Kenya has contributed to the stigmatization of mental illness and suicide**, which has deterred people from seeking treatment and support for their mental health problems. This framework suggests that through perpetuating unfavourable perceptions and social norms about mental illness, criminalizing attempted suicide has aided in Kenya's stigmatization of mental illness and suicide. It has been demonstrated that the stigma around mental illness and suicide deters people from seeking support and care. It can also result in social exclusion, discrimination, and even self-harm. Criminalizing attempted suicide may deepen the stigma, which may prevent people from getting care and worsen mental health outcomes and the possibility of additional suicide attempts.

1.6.2 The Interpersonal Theory of Suicide

The Interpersonal Theory of Suicide (Joiner, 2005) is a detailed and inclusive theory suggesting that suicidal actions stem from the combination of three elements: feeling disconnected, feeling like a burden, and having the ability to carry out suicide.³¹ Thwarted belongingness is the absence of significant social bonds and the feelings of isolation and estrangement. Perceived burdensomeness is when someone thinks they are a burden to others and believes their death would be more beneficial than their life. Developed ability to commit suicide involves conquering the innate fear and discomfort of self-inflicted harm, which is achieved through frequent exposure to distressing and challenging situations. In accordance with the theory, the most hazardous type of suicidal intent arises when a person feels hopeless about experiencing both thwarted belongingness and perceived burdensomeness. Yet, having thoughts of suicide is not enough on its own to result in suicide attempts, unless the person has developed the ability to carry out the act of suicide, allowing them to follow through with their intentions. The Interpersonal Theory of Suicide

³¹ Van Orden KA, Witte TK, Cukrowicz KC, Braithwaite SR, Selby EA, Joiner TE Jr. The interpersonal theory of suicide. *Psychol Rev.* 2010 Apr;117(2):575-600.

provides a parsimonious and testable framework for understanding the psychological processes and risk factors involved in suicidal behaviour and has implications for assessment, prevention, and intervention.

1.7 Literature Review

1.7.1 The Effects of Criminalization of Attempted Suicide

An existing literature is by scholars such as Schomerus,³² Vijay Kumar and Bilsen³³ on the risk factors associated with the criminalisation of suicide and it does not resolve the problem of commission of suicide. Scholars such as Rajkumar³⁴ internalise the essence of establishing a relationship between mental health care access and suicide. Yeo argues that constant criminalisation increases trauma among victims with actual intent to commit suicide.³⁵ ³⁶He further argues that in the Indian jurisdiction, they end up taking away their life by silent mechanisms such as poisoning themselves.³⁷ They argue that the state already has a moral obligation to restore them back by problem resolution rather than deterrence.³⁸ They interrogate the relationship between restoration and deterrence arguing that deterrence does not discourage the victims but instead traumatises them.

Ashraf in his analysis,³⁹ correlates the likelihood of imprisonment having a subsequent effect of committing suicide is high. He justifies this within the Indian context. He argues that it is unlikely that depression will be deterred, and the offenders shall be corrected.⁴⁰ Imprisonment as a correction mechanism is asymmetrical to its legal objective when dealing with such offenders. He

³² Otten D, Tibubos, A.N., Schomerus G, Brähler E, Binder H, Kruse J, Ladwig K.H., Wild P.S, Grabe H.J. and Beutel, M.E., 2021. Similarities and differences of mental health in women and men: A systematic review of findings in three large German cohorts. *Frontiers in Public Health*, 9, p.553071.

³³ Bilsen J, 2018. Suicide and youth: risk factors. *Frontiers in psychiatry*, p.540.

³⁴ Rajkumar R, 'Suicides related to the COVID-19 outbreak in India: A Pilot study of Media Reports,' *Asian Journal of Psychiatry*, 2020.

³⁵ Yeo, S. "dying with dignity: case for legalising physician-assisted suicide." *Journal of the Indian Law Institute* 50, no. 3 (2008): 321-338.

³⁶ Dekoster, K. "Hanged Bodies and Melancholic Minds: Medical Practitioners and the Forensic Investigation of Suicide in Early Modern Flanders." *Crime, Histoire & Sociétés/Crime, History & Societies* (2020): 49-71.

³⁷ Dekoster, K. "Hanged Bodies and Melancholic Minds: Medical Practitioners and the Forensic Investigation of Suicide in Early Modern Flanders." *Crime, Histoire & Sociétés/Crime, History & Societies* (2020): 49-71.

³⁸ Bilsen J, 'Suicide and youth: risk factors. *Frontiers in psychiatry*', p.540. 2018.

³⁹ Ashraf, Md Ali. "Culpability of attempt to commit suicide—a legal labyrinth amidst ethical quandary." *Journal of the Indian Law Institute* 49, no. 4 (2007): 503-524.

⁴⁰ Ashraf, Md Ali. "Culpability of attempt to commit suicide—a legal labyrinth amidst ethical quandary",. 503-524.

bases his arguments on two central claims. These offenders are more likely to be psychologically ill and they need access to health services more than they need to serve a sentence in prison.⁴¹

The same argument is made by Schaffer that legal sanctions imposed are not flexible and do not directly correspond to the protection of the dignity of the offender and their right to equality before the law. Literature based on the Indian and American jurisdictions,⁴² establishes the irrationality of the legal sanctions.

Llewellyn and Downie (2011)⁴³ argue that restorative justice, as a relational theory of justice, offers a novel and promising alternative to the current criminal justice approach to euthanasia and assisted suicide in Canada. They contend that restorative justice can address the complex and contextual harms that result from these acts and can foster more inclusive, participatory, and democratic processes to deal with the moral and legal issues they raise. They also propose that restorative justice can allow for a more empathetic and efficient approach to euthanasia and assisted suicide cases, leading to reforms in policies and practices that enhance society's ability to support individuals in their final stages of life..⁴⁴This article is relevant to my dissertation because it provides a theoretical framework and a practical model for applying restorative justice to cases of attempted suicide, **which are also criminalized in Canada**. It also contributes to my dissertation by highlighting the potential benefits and challenges of using restorative justice in the arena of assisted death, and by raising important questions about the role and responsibility of society in ensuring the well-being and dignity of individuals who seek assistance in dying.

⁴¹ Ashraf, Md Ali. "Culpability of attempt to commit suicide—a legal labyrinth amidst ethical quandary",503-524.

⁴² See,Ashraf, Md Ali. "Culpability of attempt to commit suicide—a legal labyrinth amidst ethical quandary." Journal of the Indian Law Institute 49, no. 4 (2007): 503-524, Dekoster, Kevin. "Hanged Bodies and Melancholic Minds:

⁴³ Llewellyn J, & Downie J, "Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena For Restorative Justice And A New Path For End Of Life Law And Policy In Canada", "Alberta Law Review" (2011):966-985 <https://digitalcommons.schulichlaw.dal.ca/scholarly_works/893/>

Llewellyn J, & Downie J, "Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena For Restorative Justice And A New Path For End Of Life Law And Policy In Canada", "Alberta Law Review" (2011):966-985 <https://digitalcommons.schulichlaw.dal.ca/scholarly_works/893/>

1.7.2 The Criminalization of Attempted Suicide in Various Jurisdictions

Ongeri (2023) conducted a qualitative study on the reasons for suicidal behaviour and the recommendations for suicide prevention in the **Coast region** of Kenya.⁴⁵ The study found that suicidal behavior was influenced by interpersonal and relationship problems, financial and economic difficulties, mental health conditions and religious and cultural influences. The study also identified six key recommendations for suicide prevention, such as increasing access to counselling services, improving mental health awareness, restricting suicide means, **decriminalizing suicide**, enhancing economic and educational empowerment and encouraging religion and spirituality. This study is relevant because it provides a contextualized understanding of the factors contributing to suicidal behaviour in a setting where suicide is illegal, and it highlights the need for a multifaceted approach in preventing suicide that involves community-based interventions and policy changes. The study also suggests that decriminalization of suicide would not increase suicide rates, but rather reduce stigma and improve access to care, which is in line with the restorative justice perspective adopted in this paper.

Osafo (2017) conducted a qualitative study with 18 police officers in Ghana to explore their views on persons who attempt suicide and the law criminalizing the act. The study found that the police officers profiled suicidal persons differently, ranging from needy, enigmatic, ignorant, to blameworthy. Many of the police officers disagreed with the law and suggested a repeal, while a few of them agreed with the law and suggested it should be maintained. The study also revealed that the police officers showed an inclination to help, rather than arrest, suicidal persons in their line of duty. This study contributes to the dissertation by providing empirical evidence on the attitudes and practices of the police, who are key actors in the enforcement of the law and the potential application of restorative justice mechanisms, in relation to suicide attempters in Ghana. The study also highlights the need for educating the police on suicidal behaviour and the challenges of the current law.

Kang and Mutuku Sesi (2020) examined the effect of the legal provision that criminalizes suicide attempts on suicide prevention and corresponding measures among **Christian believers from**

⁴⁵ Ongeri L, Nyawira M, Kariuki SM, Bitta M, Schubart C, Penninx BWJH, Newton CRJC, Tjldink JK. Perspectives on reasons for suicidal behaviour and recommendations for suicide prevention in Kenya: qualitative study. *BJPsych Open*. 2023 Feb 17;9(2).

Muslim backgrounds living in Dandora, Kenya.⁴⁶ The authors conducted in-depth interviews with 20 participants who had attempted suicide and found that the criminalization of suicide did not deter them from executing their plans, but rather pushed them to hide their mental distress and avoid seeking help for fear of arrest. The article also suggests that **religious factors**, such as Bible reading, worship attendance, and prayer, can help deter suicide and enhance spiritual well-being among this population. This article contributes to the dissertation by providing empirical evidence of the negative impact of the criminalization of suicide on the mental health and recovery of a marginalized and stigmatized group in Kenya, and by highlighting the potential role of faith-based interventions in suicide prevention.

1.7.3 The Application of Restorative Justice Mechanisms to cases of Attempted Suicide

Ghosh (2013) examines the concept and characteristics of restorative justice, a non-adversarial justice mechanism that aims to heal the wounds of crime victims, offenders, and communities through dialogue, accountability, and empathy.⁴⁷ He identifies the socio-legal factors that hinder the adoption of restorative justice in the American criminal justice system, such as media influence, corporatization of incarceration, religious and political ideologies, and system inertia. He argues that restorative justice holds a more comprehensive promise for healing and restoration than the traditional retributive and punitive approach, which fails to address the psychological and emotional scars of crime. This article is relevant because it provides a theoretical and comparative perspective on restorative justice and its challenges, as well as a critique of the current criminalization of attempted suicide, which is based on a narrow and outdated conception of justice that does not recognize the human dignity and value of the suicidal person.

Adinkrah (2016) provides a comprehensive overview of the legal statutes and enforcement practices regarding attempted suicide in nine African **countries, most of which are former British colonies**.⁴⁸ The author examines the similarities and differences in the anti-suicide laws, the arguments for and against criminalization, and the implications for suicide prevention and

⁴⁶ Kang, D. & Mutuku, J. "Criminalization Of Suicide Intention As A Prevention Measure To Committing Suicide: A Study Of Its Impact Among Christian Believers From Muslim Backgrounds In Dandora, Kenya" *International Journal of Social Sciences and Management Review* 3(6)(2020):134-147.

⁴⁷ Ghoshray, S. Ph.D., "An Equilibrium-Centric Interpretation of Restorative Justice and Examining Its Implementation Difficulties in America", 35 *Campbell L. Rev.* 287 (2014)

⁴⁸ Adinkrah, M. "Anti-Suicide Laws in Nine African Countries: Criminalization, Prosecution and Penalization" *African Journal of Criminology and Justice Studies* 9:1 (2016):279-292

intervention. The article is relevant for my dissertation as it offers a comparative perspective on the criminalization of attempted suicide, which is one of the main research questions I aim to address. The article also highlights the need for alternative approaches to dealing with suicidal behavior, such as restorative justice mechanisms, which is another key aspect of this paper. The article contributes to the existing literature by filling a gap in the knowledge and understanding of suicide laws and their enforcement in Africa, a region that has been largely neglected by suicidologists and criminologists.

Criminalising attempted suicide in discouraging such behaviour, however, is still up for dispute. Stanley contends that criminalizing mental illness and suicide feeds social stigmas that discourage people from getting the treatment they need. Some contend, however, that decriminalization could convey the message that suicide is acceptable, increasing the rate at which it occurs.⁴⁹

While examining Section 226 of the Penal Code, it is crucial to take into account whether it is accomplishing its intended goals and whether any positive effects exceed any potential drawbacks. Furthermore, it's critical to think about whether decriminalizing suicide attempts would help Kenya's suicide problem. Decriminalization might eliminate the legal obstacles that prevent people with suicidal thoughts from receiving support services such as mental health treatment and other types of assistance. The decriminalization of suicide may not, however, be sufficient to address its underlying causes, such as poverty, trauma, and mental illness. To effectively address the issue, a comprehensive strategy that involves both legal and social actions, such as improved access to mental health services and suicide prevention programs, may be required.

1.8 Contribution

The basic problem is that intention to commit suicide is a criminal offence. The objective of the Penal code is to remedy criminal offences committed and it stipulates punishments for different crimes committed. However, in stipulating punishments, the ultimate legal aim is to curb reoffending. This study shall prove that restorative justice mechanisms better solve cases of attempts to commit suicide as opposed to punishment by fine or imprisonment.

⁴⁹ Yeo, S. "Dying with Dignity: Case For Legalising Physician-Assisted Suicide." *Journal of the Indian Law Institute* 50, no. 3 (2008): 321-338.

1.9 Methodology

The main sources of data used in this study's qualitative research will be secondary sources such as Journal Articles, Books, book chapters, medical reports, and other online resources. Moreover, primary materials like case law will be used in the study. In general, I anticipate using a deductive approach to reach my conclusions, in which I support my hypothesis with the answers to the research questions provided in section 1.2.

The approach this study will take is textual and comparative jurisprudence approach.

The Textual analysis is a strategy that requires reading the relevant constitutional clauses (Articles 27, 43, and 54 of the Constitution of Kenya, 2010) as well as the sections of the Penal Code that make suicide attempts illegal. The focus of the study would be on Kenyan decided cases and Indian Cases on the interpretation of Section 226 read together with Section 36 of the Penal Code.

The analysis would take into account the prevailing societal norms and values to determine whether the legal provisions are still appropriate and relevant today.

1.10 Chapter Breakdown

In the course of this dissertation, Chapter 1 establishes the foundation by introducing the background, theoretical framework, and research objectives.

Chapter 2 delves into a meticulous examination of Section 226 of the Penal Code, scrutinising its legal language, legislative intent, practical implications, and constitutional compatibility. This chapter critically assesses the effectiveness of Section 226 in deterring suicide attempts while considering unintended consequences.

Chapter 3 widens the scope by exploring the potential of decriminalisation as a solution. Through a comparative lens, legal frameworks in other jurisdictions are evaluated, and the potential legal and social implications of decriminalisation are scrutinised. The chapter also probes how decriminalisation may contribute to addressing the root causes of mental health struggles.

Chapter 4 explores restorative justice mechanisms, providing a conceptual framework and analysing existing diversion programs. It evaluates how these mechanisms align with constitutional rights and examines their effectiveness in resolving cases of attempted suicide.

The dissertation culminates in Chapter 5, where key findings are summarised, and recommendations are presented. Proposed legal reforms, implications for mental health support,

and concluding reflections on a more humane and constitutional approach to the criminalization of suicide are addressed in this final chapter.



CHAPTER 2

THE CONSTITUTIONALITY OF SECTION 226 OF THE PENAL CODE

2.1 Introduction

Section 226 and as read together with Section 36 of the Penal Code criminalizes attempted suicide deeming it as a misdemeanour punishable with an imprisonment of two years or a fine or both.⁵⁰In this chapter, this paper demonstrates that the criminalization of attempted suicide is contrary to the constitution and violates not only constitutionally protected rights but also rights in various international human rights treaties that Kenya is a party to.

Specifically, the criminalization of attempted suicide and the imposition of penal sanctions violates the victims Right to the Highest Attainable Standard of Health⁵¹, their Right to Human Dignity⁵², their Right to Freedom from non-discrimination⁵³ and their freedom from torture, cruel, inhuman or degrading treatment.⁵⁴ These violations, this paper argues, make the impugned section constitutionally infirm.

2.2 The Right to the Highest Attainable Standard of Health

Article 43(1)(a) of the CoK, provides that every person has the right to the highest attainable standard of health, which includes the right to healthcare services.⁵⁵ The Health Act defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.⁵⁶ The WHO further defines mental health as a state of well-being whereby individuals recognize and realise their abilities, are able to cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their communities.⁵⁷

⁵⁰Section 36 of the Penal Code, Cap 63 of the Laws of Kenya

⁵¹ Article 43(1)(a), Constitution of Kenya 2010.

⁵² Article 28, Constitution of Kenya 2010.

⁵³ Article 27, Constitution of Kenya 2010.

⁵⁴, Article 49, Constitution of Kenya 2010.

⁵⁵ Article 28, Constitution of Kenya 2010.

⁵⁶ The Health Act 2017, Section 2. “Preamble of the Constitution of the WHO”, <https://www.who.int/about/accountability/governance/constitution#:~:text=Health%20is%20a%20state%20of,belief%2C%20economic%20or%20social%20condition.>

⁵⁷The Health Act 2017, Section 2. See also Preamble of the Constitution of the WHO, <https://www.who.int/about/accountability/governance/constitution#:~:text=Health%20is%20a%20state%20of,belief%2C%20economic%20or%20social%20condition.>

Internationally and regionally, the ICESCR and ACHR both explicitly note that everyone enjoys the best attainable state of physical and mental health.⁵⁸ Therefore, mental health plays a significant role in the enjoyment of the highest attainable standard of health and as such, the state has a duty to promote, protect and fulfil⁵⁹ this right since it is both a constitutional dictate and an international human rights obligation.

Victims of attempted suicide often suffer from underlying mental health conditions that require the attention of medical health service providers.⁶⁰ The Criminalization of suicide attempts often means that instead of victims receiving access to healthcare services to effectively address the underlying causes of their motivations to commit suicide they are treated as criminals and taken through the criminal justice system. General comment No.14 on the Right to Health provides that retrogressive measures taken in relation to the right to health are not permissible.⁶¹ Additionally states are under an obligation to *respect, protect and fulfil* the right to health.⁶² In this tripartite obligations, the obligation to respect requires the state to refrain from interfering directly or indirectly with the enjoyment of the right to health while the obligation to fulfil requires the state to adopt appropriate legislative, administrative and other measures towards the realisation of the right to health.⁶³

In this regard, the effects of the criminalization of attempted suicide are of a retrogressive character with respect to the Right to the Highest Attainable standard of health. By treating the victims of attempted suicide as criminals in the criminal justice system and not as persons requiring of mental health care services, the state fails in its obligation to respect and protect the right to highest attainable standard of health. Instead, the state should shift its focus on providing adequate and accessible mental health services to these individuals to ensure that they receive the help they require.⁶⁴ After all, the country's mental health policy decrees that there is no health without mental health.⁶⁵

⁵⁸, Article 12(1), ICESCR. Article 16(1), ACHR.

⁵⁹Article 21(1), Constitution of Kenya (2010)

⁶⁰World Health Organisation, "WHO policy brief on the health aspects of decriminalization of suicide and suicide attempts" WHO 2023

⁶¹ General Comment No.14 on the Highest Attainable Standard of Health (Art. 12), para.30

⁶² General Comment No.14 on the Highest Attainable Standard of Health (Art. 12), para.30

⁶³ General Comment No.14 on the Highest Attainable Standard of Health (Art. 12), para.30

⁶⁴ Rongoma B, "'Breaking the Chains of Stigma: The Unconstitutional Criminalization of Attempted Suicide in Kenya" <https://www.linkedin.com/pulse/breaking-chains-stigma-unconstitutional-attempted-suicide-rongoma/>

⁶⁵ Ministry of Health, "Kenya Mental Health Policy 2015-2030" pg.6 <https://publications.universalhealth2030.org/uploads/Kenya-Mental-Health-Policy.pdf>

2.3 The Right to Human Dignity

Article 28 of the CoK provides that every person has inherent right to dignity and the right to have that dignity protected.⁶⁶ Article 1 of the UDHR provides that all human beings are born free and equal in dignity and rights.⁶⁷ Although there is no definition of what the right to dignity is, the High Court in *MWK & another v Attorney General & 4 others; Independent Medical Legal Unit (IMLU) (Interested Party); The Redress Trust (Amicus Curiae) 2017 Eklr* the court ruled that the Constitution upholds human dignity, equality, and human rights as its core values, forming the foundation of the Constitution.⁶⁸ Further as held by O’ Regan J in *S v Makwanyane*, “without dignity, human life is substantially diminished.”⁶⁹ This therefore means that every person has to be treated in a manner that does not directly or indirectly offend or denigrate their dignity and worth.⁷⁰ Implicitly, the imposition of criminal convictions and fines on victims of attempted suicide violates their right to dignity as it not only exacerbates their emotional distress but also makes them feel persecuted for their mental struggles.⁷¹ Using approaches that are not punitive in nature would play an instrumental role in restoring the dignity of victims of attempted suicide.

2.4 The Right to Equal Protection and Benefit of the Law

Article 27 of the Constitution of Kenya clearly states that all individuals are treated equally under the law and are entitled to fair and uniform protection under the law,⁷² with the state prohibited from discriminating against any person, whether directly or indirectly, on any basis, including health status.⁷³ The Criminalisation of attempted suicide raises significant concerns about the treatment of persons facing mental health challenges and especially in the criminal justice system

⁶⁶ Article 28, “Constitution of Kenya 2010”, <http://kenyalaw.org/caselaw/cases/view/145769>

⁶⁷ UDHR, Article 1

⁶⁸ *MWK & another v Attorney General & 4 others; Independent Medical Legal Unit (IMLU) (Interested Party); The Redress Trust (Amicus Curiae) (Constitutional Petition 347 of 2015) [2017] KEHC 1496 (KLR) (Constitutional and Human Rights) (18 December 2017) (Judgement) < [⁶⁹ *S v Makwanyane* \(1995\) 3 SA 391 \(CC\),](http://kenyalaw.org/caselaw/cases/view/145769/></i></p></div><div data-bbox=)*

⁷⁰ Chukwuma V, “The Right To Human Dignity - A Brief Analysis” LinkedIn (December 2022) <https://www.linkedin.com/pulse/right-human-dignity-brief-analysis-victor-obinna-chukwuma/>

⁷¹ Ministry of Health, “Kenya Mental Health Policy 2015-2030” pg.6 <https://publications.universalhealth2030.org/uploads/Kenya-Mental-Health-Policy.pdf>

⁷² Article 27(1), “Constitution of Kenya 2010”, <https://www.kenyalaw.org>

⁷³ Article 27(4), Constitution of Kenya 2010. <http://kenyalaw.org/lex/actview.xql?actid=Const2010>

where these persons are treated in the same way as persons who are in a position to form intent to commit crime while they are not in a position to do so owing to the fact that they are struggling with mental issues.

2.5 Are the limitations of the Penal Code addressed by the Constitution of Kenya (2010)?

All individuals are entitled to fully exercise their rights and fundamental freedoms as outlined in the Bill of Rights, in accordance with the nature of each right or freedom. Therefore, the Bill of Rights is applicable to every law and governs all state institutions and individuals. When a court is tasked with interpreting or implementing a provision in the Bill of Rights, it must choose the interpretation that best supports the protection of rights or fundamental freedoms.⁷⁴ These are the guiding constitutional principles that courts follow when interpreting the Bill of Rights in the context of statutes that are said to be inconsistent with it.

Article 24 of the Constitution establishes conditions for restricting rights and fundamental freedoms outlined in the Bill of Rights, affirming that limitations must be lawful and justified within a democratic society based on human dignity, equality, and freedom. Criminalizing Attempted Suicide under Section 226 of the Penal Code infringes on the right to the best possible health, the right to protection of human dignity, and the right to be free from discrimination. So, the issue is whether Section 226 of the Penal Code meets the limitation test concerning the aforementioned rights.

In the case of *University Academic Staff Union (UASU) v Attorney General & Chief of Staff & another* [2018] eKLR⁷⁵, the court ruled that any action that undermines, obstructs, or undermines a fundamental right or freedom protected in the Bill of Rights must be assessed for its compliance with Article 20(1) of the Constitution. This is because the Bill of Rights applies to all laws and binds all state organs and individuals, including their actions and conduct concerning fundamental rights and freedoms.⁷⁶ This standard should be applied to evaluate Section 226 of the Penal Code. As a starting point, the approach adopted in the Canadian case *R v Oakes* provides valuable guidance. In the *Oakes* case, the court ruled that there needs to be a strong and important reason

⁷⁴ Article 20(3)(b), Constitution of Kenya 2010. < <http://kenyalaw.org/lex/actview.xql?actid=Const2010> >

⁷⁵ *University Academic Staff Union (UASU) v Attorney General & Chief of Staff & another* [2018] eKLR

⁷⁶ *Legal Advice Centre t/a Kituo Cha Sheria & 33 others v Cabinet Secretary, Ministry of Education & 7 others* (Petition 104 of 2019) [2021] KEHC 390 (KLR), <http://kenyalaw.org/caselaw/cases/view/225563/index.php?id=3479>

for the law or government action; the means used to achieve the goal must be appropriate considering the impact on individual rights; the objective must be connected to the limitation placed on the charter right; the limitation should reduce interference with the charter right; and there must be a fair balance between the benefits of the restriction and its drawbacks..⁷⁷

Furthermore, in *Jacqueline Okuta & another v Attorney General & 2 others* (2017) eKLR, the court ruled that the state or the party aiming to justify the restriction must establish the connection between the limitation and its objective and assess whether there are alternative measures that are less intrusive to achieve the objective.⁷⁸ From the foregoing, it is apparent that the test to be met is the Article 24 test which must be applied in a manner that demonstrates it is proportional and in any event, there are no less restrictive means in place of the limitation complained of.

In the instant case, the criminalisation of attempted suicide does not meet any pressing or substantial need or objective. Even if it were to be argued that the criminalisation was meant to reduce the cases of attempted suicide, research has overwhelmingly shown that this is not the case.⁷⁹ Moreover, the criminalisation itself is not objective or proportional to the burden on the rights to health, freedom from non-discrimination and dignity of the victims of attempted suicide. On the contrary, it lowers their access to mental health services, places them at a position of stigmatisation by their communities lowering their dignity by branding them as criminals and applying a standard applied to other persons who are mentally competent and perpetuates discrimination. Additionally, in the alternative, there are less restrictive means, such as the means suggested in this paper that could be used to achieve the objectives intended. The use of restorative justice mechanisms as a form of diversion from the mainstream criminal justice process would address the underlying mental health challenges of the victim, increase the accuracy and reporting of suicide cases and reduce the stigma that the victims go through.

⁷⁷ *R v Oakes* (1986) 1 SCR 103

⁷⁸ *Jacqueline Okuta & another v Attorney General & 2 others* (2017) eKLR

⁷⁹ World Health Organisation, “WHO policy brief on the health aspects of decriminalization of suicide and suicide attempts” WHO 2023 and Sarah Johnson, “It’s a huge sign of progress’: the battle to decriminalise suicide”, “The Guardian” (July 2023) <https://www.theguardian.com/global-development/2023/jul/20/its-a-huge-sign-of-progress-the-battle-to-decriminalise-suicide>, <<https://academic.oup.com/medlaw/article-abstract/32/1/101/7459209?redirectedFrom=fulltext&login=false>>

2.6 Conclusion

The criminalization of attempted suicide represents a complex intersection of legal, constitutional, and human rights considerations. In this dissertation chapter, we have delved into the constitutional and international human rights framework to critically analyse the constitutionality of Section 226 of the Penal Code in Kenya. Through a thorough examination, it becomes apparent that the criminalization of attempted suicide not only runs counter to fundamental human rights principles but also undermines efforts to address mental health challenges in the country.

At the heart of this discussion lies the tension between legal frameworks that seek to regulate behaviour and the imperative to protect and uphold human rights. Section 226 of the Penal Code, which criminalizes attempted suicide, presents a prime example of this tension. On one hand, proponents of criminalization argue that it serves as a deterrent and upholds social order. On the other hand, opponents highlight the inherent injustice and harm inflicted upon individuals facing mental health crises.

Central to the analysis is the Constitution of Kenya, which serves as the supreme law of the land and guarantees fundamental rights and freedoms to all citizens. Article 43(1)(a) explicitly recognizes the right to the highest attainable standard of health, encompassing both physical and mental well-being. However, the criminalization of attempted suicide undermines this right by subjecting individuals to punitive measures rather than providing them with the necessary medical and psychological support.

Moreover, the right to human dignity, enshrined in Article 28 of the Constitution, is compromised by the criminalization of attempted suicide. By treating individuals in distress as criminals, the state not only exacerbates their suffering but also perpetuates stigma and discrimination. Every person has inherent dignity and worth, which must be respected and protected by the state and society at large.

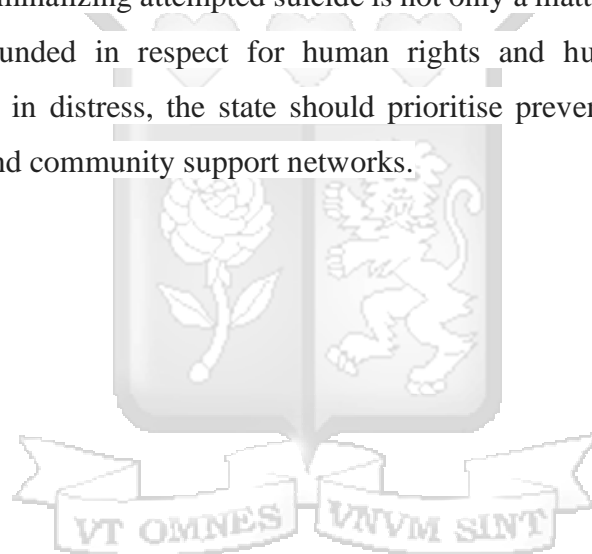
Furthermore, the principle of equal protection under the law, as articulated in Article 27 of the Constitution, is violated by the criminalization of attempted suicide. Individuals facing mental health challenges are entitled to the same legal protections and support as any other citizen. However, the criminal justice system often fails to recognize the unique needs and vulnerabilities of these individuals, leading to further marginalisation and injustice.

In assessing the constitutionality of Section 226 of the Penal Code, there must be an application of the limitation's framework outlined in Article 24 of the Constitution. This framework requires that

any limitation on rights and freedoms be reasonable, justifiable, and proportionate in a democratic society. However, the criminalization of attempted suicide fails to meet these criteria. It lacks a pressing and substantial objective, disproportionately burdens individuals' rights, and disregards less restrictive alternatives.

Drawing on international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), we find further support for the decriminalization of attempted suicide. These treaties affirm the right to health, human dignity, and equal protection under the law, principles that are undermined by the punitive approach to suicide prevention.

Moving forward, it is imperative that Kenya reconsiders its approach to suicide prevention and mental health care. Decriminalizing attempted suicide is not only a matter of legal reform but also a moral imperative grounded in respect for human rights and human dignity. Instead of criminalizing individuals in distress, the state should prioritise preventive measures, access to mental health services, and community support networks.



CHAPTER 3

TOWARDS DECRIMINALIZATION: LESSONS FROM INDIA AND GHANA

3.1 Introduction

This chapter conducts a study focusing on India and Ghana regarding the decriminalization of attempted suicide. The selection of these countries is based on two key factors. Firstly, both India and Ghana have a shared colonial history under British rule, which resulted in the inheritance of anti-suicide laws. Secondly, in recent years, both nations have taken steps to decriminalize attempted suicide. Therefore, analysing the experiences of India and Ghana offers valuable insights into the process of decriminalisation, considering their historical context and legislative reforms.

3.2 The Decriminalization of Attempted Suicide in India

Much like Kenya, the origins of the criminalization of attempted suicide can be traced back to the British Colonial Period where the colonial government classified it as an offence against the state.⁸⁰ The operative provision being Section 309 of the Indian Penal Code. It stipulates that any individual attempting suicide or taking actions towards committing suicide may face prosecution and imprisonment for up to one year. Alternatively, they may be fined, or subjected to both imprisonment and a fine.⁸¹ Throughout the existence of the law, the cases of suicide in India have been on the increase with the National Crime Records Bureau noting in 2019 that 139, 123 lives had been lost through suicide.⁸² Shockingly, the rate of suicide among married women was higher than in all other portions of society.⁸³

Inevitably, the debates surrounding the decriminalization of this particular section have raged on over the years with two questions surrounding the discussion – whether A is the same as homicide

⁸⁰ Dhankar, R. “An analysis of the Constitutional Validity of section 309 of the Indian Penal Code, 1860” *De Jure Nexus Law Journal* 1 (3) 2021

⁸¹ Section 309, Indian Penal code 1860

⁸² Crime in India-2018. (2020). National Crime Records Bureau Chapter 2 <https://ncrb.gov.in/en/crime-india-2018/>

⁸³ Farhana Helal Mehtab, Arif Mahmud, Riaduzzaman, Mahabub Ul Alam Khan & Fariha Hossen, “Right to commit suicide in India: A comparative analysis with suggestion for the policymakers,” *Cogent Social Sciences* 2022. <<https://www.tandfonline.com/doi/full/10.1080/23311886.2021.2017574>>

and whether there can be an abetment for suicide or AS.⁸⁴ This has been informed by the fact different provisions of the Indian Penal Code deal with both issues. Section 309 pertains to AS, while Section 306 concerns the act of encouraging suicide, prescribing a maximum imprisonment of ten years for those found guilty of abetting suicide.⁸⁵

Objections to these laws can be traced back to the 42nd Law Reform Commission of 1971, which determined that Section 309 was excessively harsh and lacked justification, recommending its repeal by the government.⁸⁶ While this recommendation was adopted by the government and placed in the Indian Penal Code (Amendment) Bill, 1972 nothing much came of it since it lapsed after the dissolution of the Lok Sabha in 1979.⁸⁷ In an unexpected development in 1997, the Law Commission, in its 156th Report, shifted its position from its previous stance, stating that retaining Section 309 in the statute books was advantageous as it contributed to preventing serious crimes like narcotic trafficking, terrorism, or suicide bombings.⁸⁸ The rationale for this change of heart was that say for instance a suicide bomber tried to perform a terrorist attack and failed then it would not be possible to charge them under Section 309 if it were repealed.⁸⁹

However, in 2008, the 210th Law commission report recommended once more that the government should omit Section 309 as it was unconstitutional observing that it was cruel and inhumane as it punished a distressed person who had failed in ending his life.⁹⁰ The commission's report further observed that by criminalising AS, and subjecting the survivor to punishment, it only added more depression and agony into their lives. As such, the government had to take urgent steps to remove it completely from the Indian Penal Code irrespective of whether it was constitutional or not.⁹¹

⁸⁴ Malathesh BC., Tikka Sk, Jain V, S Yadukul and Math SB. "De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them", <https://journals.sagepub.com/doi/10.1177/02537176221084075>

⁸⁵ Indian Penal Code 1860, Section 306

⁸⁶ "42nd Law Commission Report", "Law Commission of India" <https://lawcommissionofindia.nic.in/1-50/Report42.pdf>

⁸⁷ Dhankar, R. "An analysis of the Constitutional Validity of section 309 of the Indian Penal Code, 1860" De Jure Nexus Law Journal 1 (3) 2021

⁸⁸ "156th Law Commission Report", "Law Commission of India" <https://lawcommissionofindia.nic.in/101-169/Report156Vol1.pdf>

⁸⁹ "156th Law Commission Report", "Law Commission of India" <https://lawcommissionofindia.nic.in/101-169/Report156Vol1.pdf>

⁹⁰ "210th Law Commission Report", "Law Commission of India" <https://lawcommissionofindia.nic.in/reports/report210.pdf>

⁹¹ "210th Law Commission Report", "Law Commission of India" <https://lawcommissionofindia.nic.in/reports/report210.pdf>

The sections have also over the years been subjected to Judicial scrutiny through multiple cases. For instance, in *State v Sanjau Kumar Bhatia*,⁹² The court declared the clause to be antiquated and out of sync with modern society. The law encouraged interacting with criminals rather than sending a victim to seek mental assistance, therefore sustaining a grim future that society had already come to expect. Comparably, the Bombay High Court held in *Maruti Shripati Dubal v. State of Maharashtra*⁹³ that criminalising attempted suicide was unconstitutional and explicitly violated Articles 14 and 21 of the Constitution. Interestingly, the court observed that the Right to life also included the Right to Die. When the question of the constitutionality of Section 309 finally got to the Supreme Court the court appeared to make conflicting decisions. For example, the court determined in *P. Rathinam v. Union of India*⁹⁴ that Section 309 violates Articles 14 and 21 since the right to life does encompass the right to die. It was noted that suicide is not a criminal instinct; rather, it is a mental health issue.⁹⁵ A psychiatrist's counselling should be the immediate response to a suicide attempt rather than incarceration.

In contrast, in the case of *Gian Kaur v State of Punjab*⁹⁶, the court reversed its earlier ruling in *Rathinam* and reinstated Section 309, arguing that the Right to Die cannot be inferred from Article 21, and thus Section 309 does not violate Article 21 of the Constitution. The court asserted that while the Right to Life is undoubtedly protected under Article 21, the notion of suicide does not align with this Article, and therefore the Right to Die is not encompassed by Article 21. However, after 15 years in the case of *Aruna Shanbaug v Union of India*⁹⁷, where the legalization of passive euthanasia was addressed, the court urged Parliament to abolish Section 309 of the IPC. The court reasoned that individuals who attempt suicide due to emotional distress require assistance rather than punishment.

3.2.1 The Mental Health Care Act of 2017

Perhaps the most significant turning point in the clamour for the decriminalisation of AS in India was the enactment of the Mental Health Care Act of 2017 (MCHA). Section 115 of the MCHA

⁹² *State v Sanjay Kumar Bhatia* 1985 SCC Del 134

⁹³ *Maruti Shripati Dubal v. State of Maharashtra*

⁹⁴ *P. Rathinam v. Union of India*

⁹⁵ Malathesh BC., Tikka Sk, Jain V, S Yadukul and Math SB. "De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them", <https://journals.sagepub.com/doi/10.1177/02537176221084075>

⁹⁶ *Gian Kaur v State of Punjab*

⁹⁷ *Aruna Shanbaug v Union of India*

provides that regardless of the provisions outlined in section 309 of the IPC, individuals who attempt suicide will be presumed, unless proven otherwise, to be experiencing severe stress and shall not be subject to trial or punishment under the aforementioned Code.⁹⁸ Essentially, this part of the law stated that a charge under Section 309 could only be upheld once stress has been eliminated as a factor. Furthermore, Section 115(2) of the MCHA states that the responsible government is obligated to offer care, treatment, and rehabilitation to individuals who have experienced severe stress and attempted suicide, in order to decrease the likelihood of future suicide attempts..⁹⁹

While the introduction of the provision was a welcome move, there are still underlying issues that claw it back. For instance, the practice of reporting attempted suicide attempts to the police irrespective of whether it causes public disturbance still continues and once police are informed they conduct an informal interrogation of the person who was involved.¹⁰⁰ The problem with this is that the interview process by the police, is bound to make the survivor feel that they are being interrogated and likely increase their already high levels of stress.¹⁰¹ As a result, some people who have attempted suicide might not be able to approach healthcare providers because of the fear of interrogation.¹⁰²¹⁰³

Nonetheless, the implementation of the above provision was a significant move in the right direction towards ensuring that survivors of attempted suicide are provided with the much-needed professional help that they need. However, the Bharatiya Nyaya Sanhita 2023 (BNS) that makes changes to the IPC, it completely removes Section 309 of the IPC in its entirety meaning that attempted suicide will no longer be a criminal offence.¹⁰⁴ The explicit removal of the section means that the confusion that had ensued with the operation of Section 115 of the MHCA together with

⁹⁸Section 115, Mental Health Care Act 2017.

⁹⁹Section 115 (2), Mental Health Care Act 2017.

¹⁰⁰ Malathesh BC., Tikka Sk, Jain V, S Yadukul and Math SB. “De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them”. *Indian J Psychol Med.* 2022;44(3):290–292.

¹⁰¹ Malathesh BC., Tikka Sk, Jain V, S Yadukul and Math SB. “De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them”. *Indian J Psychol Med.* 2022;44(3):290–292.

¹⁰² Ranjan R, Kumar S, Pattanayak. RD, “(De-) criminalization of attempted suicide in India: A review”. *Ind Psychiatry J* 2014; 23: 4–9

¹⁰³ Malathesh B.C, Tikka S.K, Jain V, Yadukul S, Bada Math S, "De-Criminalization of Suicide: An Overview, Key Practical Challenges, and Suggestions to Address Them", "*Indian Journal of Psychological Medicine*", 2022 <https://journals.sagepub.com/doi/10.1177/02537176221084075>

¹⁰⁴ Pillutla R, “Decriminalising attempted suicide in India: the new penal code”, “Keshav Desiraju India Mental health Observatory” (October 2023) <https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/#:~:text=The%20new%20bill%20removes%20section,is%20still%20a%20punishable%20offence.>

the provisions of the IPC has finally been resolved. Nonetheless, the success of the removal of Section 309 and the effective decriminalisation of AS thereof, is predicated on a collaborative effort between multiple stakeholders to ensure a more effective approach to suicide prevention.¹⁰⁵

3.3 Decriminalization of Attempted Suicide in Ghana

Ghana obtained its anti-suicide law from its previous British Colonial rulers. According to Section 57(1) of the Criminal code in Ghana, it is considered a misdemeanour for someone to try to commit suicide.¹⁰⁶ Accordingly, a person who attempts suicide is subject to arrest and prosecution and is made to face criminal sanctions upon conviction.¹⁰⁷

Interestingly, the path to decriminalization of attempted suicide has largely been on the basis of research meant to demonstrate the underlying effects of suicide with a view to instigating legislative amendments. For Instance, leading research by (Akotia, 2019), (Osafo, 2019) and (Quarshie & Andor-Arthur 2020) has primarily been on the attitudes of various professionals in the legal, health, media and even police sectors on their views on the effects of Suicide amongst Ghana's population.

As a result, two petitions have been presented in Ghana's parliament in 2012 and 2017 urging the legislators to repeal the country's anti-suicide law.¹⁰⁸ These petitions were lodged on the support of various stakeholders as mentioned above. For instance, in research conducted among lawyers and judges, the prevailing view was that persons who attempt suicide should not be seen as criminals but as patients in need of support from the health system.¹⁰⁹ Police personnel on the other hand were of the view that diverting the survivors of attempted suicide to mental healthcare other

¹⁰⁵ Pillutla R, "Decriminalising attempted suicide in India: the new penal code" Keshav Desiraju India Mental health Observatory (October 2023) <https://cmhlp.org/imho/blog/decriminalising-attempted-suicide-in-india-the-new-penal-code/#:~:text=The%20new%20bill%20removes%20section,is%20still%20a%20punishable%20offence.>

¹⁰⁶ The Criminal Code of Ghana (Act 29 of Ghana, Section 57)

¹⁰⁷ Osafo J, Akotia C, & Quarshie E, "Police Views of suicidal persons and the Law Criminalizing Attempted Suicide in Ghana: A qualitative study with policy implications" Sage Open (July) 2017.

¹⁰⁸ Quarshie, E. N.-B., Oppong Asante, K., Andoh-Arthur, J., Akotia, C. S., & Osafo, J. (2022). To Keep the Law or to Repeal It: Views of Parliamentarians On the Call to Decriminalise Attempted Suicide in Ghana. OMEGA - Journal of Death and Dying, 0(0).

¹⁰⁹ Quarshie, E. N.-B., Oppong Asante, K., Andoh-Arthur, J., Akotia, C. S., & Osafo, J. (2022). To Keep the Law or to Repeal It: Views of Parliamentarians on the Call to Decriminalise Attempted Suicide in Ghana. OMEGA - Journal of Death and Dying, 0(0).

than arresting or prosecuting them was more helpful to them. ¹¹⁰Simply put, the push for decriminalisation of attempted suicide has largely been through advocacy and scholarship; a practise in line with the recommendation of the WHO on the role of advocacy groups in promoting awareness on the deleterious effects of suicide not only on the victims but on survivors of attempted suicide and their families, friends and community. ¹¹¹

These efforts finally bore fruit when in March 2023, Ghana decriminalised attempted suicide and the government initiated a process of drafting and implementing a national suicide prevention policy and expanding the mental health pipeline. ¹¹²Additionally, the Ghana Association for Suicide Prevention has been devising programmes for dissemination in schools with long term plans to hire more psychologists. ¹¹³

3.4 Towards Decriminalisation in Kenya

Much like Ghana and India, Kenya's anti-suicide law was as a result of colonisation. Paradoxically, the UK decriminalized its anti-suicide provisions in 1961. ¹¹⁴ In Kenya, the push for decriminalization of the anti-suicide provisions has been research driven with multiple studies on the effects of decriminalization of suicide and has not necessarily taken a more judicial or legislative approach until recently ¹¹⁵. It is therefore no secret that the suicide rate in Kenya has been on a steady increase and there has been a spirited attempt at demonstrating this through both quantitative and qualitative approach.

To date, the most significant step in the decriminalisation of attempted suicide was in the Penal Code (Amendment) Bill 2021 which intended to decriminalize suicide to ensure that victims are provided with the necessary assistance in line with the Mental Health since attempted suicide was

¹¹⁰ Osafo J, Akotia C, & Quarshie E, "Police Views of suicidal persons and the Law Criminalizing Attempted Suicide in Ghana: A qualitative study with policy implications" Sage Open (July) 2017.

¹¹¹World Health Organisation, "WHO policy brief on the health aspects of decriminalization of suicide and suicide attempts" WHO 2023

¹¹² Sarah Johnson, "It's a huge sign of progress': the battle to decriminalise suicide" the Guardian (July 2023) <https://www.theguardian.com/global-development/2023/jul/20/its-a-huge-sign-of-progress-the-battle-to-decriminalise-suicide#:~:text=Osafo%2C%20head%20of%20psychology%20at,face%20imprisonment%20or%20a%20fine.>

¹¹³WHO, "WHO policy brief on the health aspects of decriminalization of suicide and suicide attempts" WHO 2023

¹¹⁴ Neeleman J, "Suicide as a crime in the UK: Legal history, international comparisons and present implications", "Acta Psychiatrica Scandinavica", (1996), 94(4), 252–257.

¹¹⁵Okello L. N., Sirera M., Otieno G. O. & Muhingi W. N. "Psycho-Spiritual Perspective on the Challenge of Suicide Prevention in Kenya", "Journal of Research Innovation and Implications in Education", 5(4), (2021), 238 – 247.

a mental health issue which should not be subject to a criminal process.¹¹⁶ Unfortunately, the Bill was never passed. In 2022, the KNCHR filed a constitutional petition at the High Court challenging the constitutionality of Section 226 of the Penal Code. At the time of writing this paper, the matter had already been heard and is awaiting determination.¹¹⁷

However, despite the provisions still being active, there has been a shift in prosecutorial policy in the handling of cases of attempted suicide. In *Re: Ali Galgalo*, the Prosecution declined to open charges against Ali Galgalo who had been accused of the offense of attempted suicide. The prosecution pointed out that even though attempting suicide is technically a crime, it is now common practice not to prosecute or penalize individuals who attempt suicide because it is seen as a result of mental illness, and punishing them would be like penalizing someone for being unwell. In this case, the prosecution stepped in to suggest that the victim should be taken to the hospital for a mental evaluation and receive therapy.

This shift in prosecutorial policy is an indicator that attempted suicide in Kenya is now being viewed not as a crime but a form of underlying mental issues that should be addressed through access to health care services.

3.5 Conclusion

In conclusion, the examination of India and Ghana's experiences with the decriminalization of attempted suicide provides valuable lessons for Kenya. By examining the historical background and recent legislative reforms in both countries, valuable insights have been gained into the complexities and nuances of this process. The shared colonial history of British rule and the subsequent inheritance of anti-suicide laws underscore the similarities between India and Ghana. Furthermore, the recent steps taken by both nations to decriminalize attempted suicide highlight a growing recognition of the need for reform in this area. By drawing lessons from the experiences of India and Ghana, policymakers and stakeholders can better understand the challenges and opportunities associated with decriminalizing attempted suicide, ultimately contributing to more compassionate and effective legal frameworks for mental health advocacy globally.

¹¹⁶Statement of the Objects and Reasons for the Bill, The Penal Code, (Amendment) Bill, 202.

¹¹⁷ Southern Africa Litigation Center, “Kenya: Challenge to offence of attempted suicide” May 2023 <https://www.southernafricalitigationcentre.org/2023/05/08/kenya-challenge-to-offence-of-attempted-suicide/>

CHAPTER 4

ADOPTING A RESTORATIVE JUSTICE APPROACH

4.1 Introduction

This chapter explores the concept of Restorative Justice, its foundations and how Restorative Justice mechanisms can be used in addressing cases concerning victims of attempted suicide. It further highlights how these mechanisms can be incorporated into the existing diversion program in the country through an analysis of the National Diversion Policy (the Policy) and the Diversion Guidelines (the Guidelines).

4.2 Conceptualising Restorative Justice

The Criminal Justice System has developed historically as a punitive means of retribution focussed on the assumption that imprisonment would somehow bring relief to victims of crime and in a way to correct the behaviour of the offender.¹¹⁸ This foundation has led to a system that does not address the psychological and emotional scars of crime that not only affect the victim but also the offender, their family and the immediate community. This conception of the criminal justice system has been shaped by lawmakers the world over who represent the views of the larger public. In executing their function as the representatives of the people, they have designed rules borne out of the public imagination of what is considered illegitimate. This is problematic because this view is founded on the basis of retribution and vengeance and as a result, the initial objectives of healing and restoration between the parties involved have been subsumed within this vengeance-based system.¹¹⁹

This perspective was influenced by negative feelings, cognitive distortions, and social norms, causing it to overlook the healing requirements of those impacted.¹²⁰ As a corrective approach

¹¹⁸ Ghosh R.S, “An Equilibrium-Centric Interpretation of Restorative Justice and Examining Its Implementation Difficulties in America” *Campbell Law Review* 3(2)(2013):287-332

¹¹⁹ Atiba Goff P, “Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences” *Personality and Soc.Psychol* (2008)

¹²⁰ Llewelyn, J. & Downie, J. “Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena for Restorative Justice and A New Path for End Of Life Law And Policy In Canada”, “*Alberta Law Review*” (2011):966-985 <https://digitalcommons.schulichlaw.dal.ca/scholarly_works/893/>, <<https://albertalawreview.com/index.php/ALR/article/view/142>>

then, Restorative Justice theory was created to fill this clear void in the criminal justice system. Restorative Justice has been defined as a justice theory based on relationships.¹²¹ In this sense, it starts from the understanding that the relationships that exist among people are foundational in their daily interactions. As such, people are invariably connected with one another in various complex and multi-layered ways.¹²²

Restorative Justice rejects the idea that relationships are merely a preference, emphasizing that people are inherently connected, whether positively or negatively.¹²³ Rather than promoting relationships for their own sake, it focuses on the reality that relationships exist and influence individuals.¹²⁴ This relational theory gives serious consideration to the structure and impact of relationships, aiming to identify harmful dynamics and instances of harm within them.

The goal of restorative justice is not to replicate certain relationship archetypes but to establish relationships marked by equal respect, concern, and dignity. This measure of justice involves understanding the context and circumstances of a situation to rebuild relationships in a restorative manner.¹²⁵ Importantly, restorative justice opposes an individualistic approach, grounding itself in the belief that individuals are inherently relational. It acknowledges individual agency, responsibility, and accountability, while highlighting that choices made by individuals have implications for and affect others.

In this sense then, Restorative Justice approaches can be used in addressing cases concerning survivors of victims attempted suicide. An approach that is guided not on imposing criminal sanctions but that is meant to restore the relationship between the survivor -while taking responsibility for their action- and their immediate family members, friends and the community who might have been affected by their actions or might have contributed to the circumstances causing the victim in the first place to attempt suicide.

¹²¹ Llewelyn, J. & Downie, J. "Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena for Restorative Justice and A New Path For End Of Life Law And Policy In Canada", "Alberta Law Review" (2011):966-985 <<https://albertalawreview.com/index.php/ALR/article/view/142>>

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

4.3 Attempted Suicide and Restorative Justice

The conventional method varies from a restorative justice approach in how a wrongdoing is recognized. As a result of this method, it will perceive an act of suicide as immoral due to the violation of an existing law. This is because the traditional approach considers all violations mentioned in the law to be the same, leading to the need for a legal response.¹²⁶

Restorative justice's focus on relationships when addressing harm highlights a wider range of individuals who should participate in the justice system's response to the criminalization of attempted suicide.¹²⁷ Because relationships are given special importance, we can see how various types of people and groups could be impacted. A restorative approach, in contrast to traditional adversarial logic, reveals the complex connections affected by attempted suicide, instead of simply focusing on the offender and the state.

The traditional approach may struggle to recognize the victim comprehensively, but a restorative approach reveals the complexity of relationships affected by the incident. Harms extend beyond the individual attempting suicide to encompass the families and support communities of both the person attempting suicide and any involved parties. Additionally, other interest groups, such as mental health advocates, healthcare professionals, and the broader public, can be intricately connected to the situation.¹²⁸ Restorative justice acknowledges the multifaceted connections and effects on these various parties.

Restorative justice expands the view and groups involved while also viewing them as dynamic and complex. In cases of attempted suicide, the individual should not be seen solely as a victim or criminal, and those around them may need empathy rather than blame.¹²⁹ Because a restorative approach does not focus on placing blame for punishment, it can instead aim to establish accountability and responsibility in more detailed and varied manners. Comprehending the intricate dynamics of a suicide attempt scenario is essential for a comprehensive understanding of accountability and meaningful responsibility.

¹²⁶ Llewelyn, J. & Downie, J. "Restorative Justice, Euthanasia, And Assisted Suicide: A New Arena For Restorative Justice And A New Path For End Of Life Law And Policy In Canada" 966-985.

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ Ibid

4.4 Diversion as a Restorative Justice tool

Diversion programs are structured programs designed for individuals with mental illness, aiming to decrease their involvement in the criminal justice system both in terms of volume and frequency.¹³⁰ In other places, diversion is described as guiding individuals with mental illness who have committed a crime away from the legal system and towards mental health and social services.¹³¹

In Kenya and in the criminal justice system, diversion is governed by the Constitution, legislation and specifically the National Diversion Policy and the Diversion Guidelines.¹³² Under the Policy, Diversion is defined as a means of resolving cases without resort to full judicial proceedings and that allows for quick disposal of matters.¹³³ It can take different forms including but not limited to a structured diversion programme, restorative justice process of similar scheme.¹³⁴ The policy states that diversion is based on important principles like taking responsibility, being accountable to the victim, making restitution, focusing on rehabilitation and reintegration, and prioritizing transparency and public interest.¹³⁵

Of interest is that the policy provides for diversion categories and includes vulnerable persons irrespective of the nature of the offence. The policy explicitly provides special provisions for mentally challenged people. However, and in this specific context, victims of attempted suicide are not necessarily mentally challenged. This inefficiency in the guidelines might be by design since criminalization of attempted suicide is still an offence in the Penal Code. While the prosecution policy as seen from the Ali Galgalo case has been that victims of attempted suicide are now referred to mental health services, it is important that this policy is reflected in the official prosecution policy and in the diversion guidelines as well.

A restorative justice approach that takes the views of all stakeholders should be adopted to cater for cases involving victims of attempted suicide. This would be perfectly in line with the Policy

¹³⁰ Criminal Justice, "Sentencing Diversion Programs" Criminal Justice <https://criminal-justice.iresearchnet.com/forensic-psychology/sentencing-and-incarceration/sentencing-diversion-programs/>

¹³¹ Public safety Canada, "Criminal Justice Diversion for Persons with Mental Disorders, A Review of Best Practices" <https://www.publicsafety.gc.ca/lbr/archives/cnmes-plcng/cn32173-eng.pdf>

¹³² Constitution of Kenya Article 48, Article 159

¹³³ The Diversion Policy, Definitions, 8

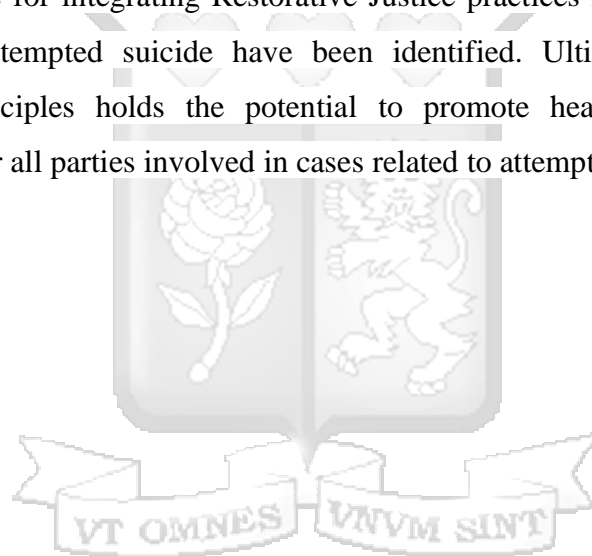
¹³⁴ The Diversion Policy, Definitions, 8

¹³⁵ Yeo, Stanley. "DYING WITH DIGNITY: CASE FOR LEGALISING PHYSICIAN-ASSISTED SUICIDE.", 321-338.

since it already anticipates that diversion can be applied through a structured diversion programme or restorative justice process of a similar scheme.

4.5 Conclusion

In conclusion, this chapter has delved into the concept of Restorative Justice and its potential application in addressing cases involving victims of attempted suicide. By examining its foundations and principles, we have gained insights into the transformative nature of Restorative Justice mechanisms. Moreover, the discussion has underscored the importance of incorporating these mechanisms into existing diversion programs to better serve the needs of individuals affected by attempted suicide. Through an analysis of the National Diversion Policy and the Diversion Guidelines, opportunities for integrating Restorative Justice practices in the resolution of cases involving victims of attempted suicide have been identified. Ultimately, the adoption of Restorative Justice principles holds the potential to promote healing, reconciliation, and meaningful resolution for all parties involved in cases related to attempted suicide.



CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

In this final chapter, we draw upon the insights gleaned from our exploration of the decriminalization of attempted suicide and the adoption of a restorative justice approach. Building upon the experiences of India, Ghana, and Kenya, we present recommendations and conclusions aimed at fostering more compassionate and effective responses to individuals affected by attempted suicide.

5.1 Recommendations

5.1.1 Legislative Reform

5.1.1.1 Repealing or Amending Existing Laws

Legislative reform efforts should prioritize the repeal or amendment of laws that criminalize attempted suicide. This involves reviewing and revising existing penal codes to remove provisions that impose punitive measures, such as imprisonment or fines, on individuals who attempt suicide. Instead, legislative amendments should reflect a shift towards decriminalization, recognizing attempted suicide as a mental health issue rather than a criminal offense.

5.1.1.2 Introducing Protective Measures

In addition to decriminalisation, legislative reform should introduce protective measures to safeguard the rights and well-being of individuals experiencing mental health crises. This may include provisions requiring law enforcement agencies to divert individuals in crisis to appropriate mental health services rather than initiating criminal proceedings. By incorporating protective measures into legislation, policymakers can ensure that individuals in distress receive the support and intervention they need to address underlying mental health issues.

5.1.1.3 Incorporating Human Rights Standards

Legislative reform efforts should align with international human rights standards and principles, such as the right to health, dignity, and non-discrimination. This involves ensuring that legal frameworks uphold the fundamental rights and freedoms of individuals experiencing mental health challenges, including the right to access quality mental health care without fear of stigma or discrimination. By integrating human rights standards into legislative reforms, policymakers can promote a rights-based approach to mental health advocacy and suicide prevention.

5.1.1.4 Engaging Stakeholders

Legislative reform processes should involve meaningful engagement with stakeholders, including mental health professionals, advocacy groups, and affected communities. This entails consulting stakeholders throughout the legislative process, from policy development to implementation, to ensure that diverse perspectives and experiences are taken into account. By fostering collaboration and dialogue, policymakers can develop legislative reforms that reflect the needs and priorities of those directly affected by mental health legislation.

5.1.1.5 Advocating for Policy Change

Stakeholders, including mental health professionals and advocacy groups, should actively advocate for policy change and legislative reform to promote mental health and suicide prevention. This may involve lobbying policymakers, organising public demonstrations, and mobilising grassroots support for legislative initiatives. By harnessing collective advocacy efforts, stakeholders can exert pressure on decision-makers to prioritise mental health legislation and enact meaningful reforms that protect the rights and well-being of individuals experiencing mental health challenges.

5.1.2 Awareness and Education

5.1.2.1 Targeted Messaging

Awareness campaigns should employ targeted messaging aimed at challenging stigma, raising awareness of mental health issues, and promoting help-seeking behaviours. Messaging should be tailored to resonate with diverse audiences, including different age groups, cultural backgrounds, and socio-economic statuses. By addressing misconceptions and fostering understanding, awareness campaigns can create a supportive environment for legislative reform efforts.

5.1.2.2 Collaboration with Stakeholders

Collaboration with mental health professionals, advocacy groups, and community organisations is essential for the success of awareness campaigns. These stakeholders can provide valuable insights into the specific needs and concerns of affected communities and help ensure that messaging is culturally sensitive and appropriate. By partnering with stakeholders, awareness campaigns can reach a wider audience and have a greater impact on public attitudes and perceptions.

5.1.2.3 Multi-Channel Approach

Awareness campaigns should utilise a multi-channel approach to reach diverse audiences through various platforms, including traditional media, social media, community events, and educational initiatives. This approach allows campaigns to engage individuals across different age groups and demographics and maximise their reach and effectiveness. By leveraging multiple channels, awareness campaigns can amplify their message and generate broader support for legislative reform efforts.

5.1.2.4 School-Based Programs

Education initiatives should include school-based programs aimed at promoting mental health literacy and resilience among students. These programs can incorporate curriculum-based lessons, workshops, and peer support groups to equip students with the knowledge and skills to recognize signs of mental distress, seek help when needed, and support their peers in crisis. By integrating mental health education into school curricula, policymakers can promote early intervention and destigmatize discussions around mental health.

5.1.2.5 Training for Healthcare Professionals

Education initiatives should also include training programs for healthcare professionals to enhance their capacity to identify and respond to mental health issues effectively. Training should cover topics such as suicide risk assessment, crisis intervention, and trauma-informed care, equipping healthcare professionals with the skills and confidence to provide timely and appropriate support to individuals in crisis. By investing in professional development opportunities, policymakers can strengthen the mental health workforce and improve access to quality care for those in need.

5.1.3 Integration of Restorative Justice

5.1.3.1 Emphasising Restorative Justice Principles

Legislative reforms should prioritize the integration of restorative justice principles into existing legal frameworks governing mental health and suicide prevention. This may involve revising laws and policies to emphasize accountability, responsibility, and community engagement in addressing instances of attempted suicide. By adopting a restorative justice approach, policymakers can shift

the focus from punishment to healing and reconciliation, creating opportunities for meaningful resolution and support for individuals in crisis.

5.1.3.2 Legal Protections for Victims

Legislative reforms should include provisions that afford legal protections and support services to victims of attempted suicide and their families. This may involve establishing mechanisms for restitution, rehabilitation, and reintegration to address the needs of individuals affected by suicide attempts. By enshrining these protections in law, policymakers can ensure that survivors receive the support and resources they need to recover and rebuild their lives in the aftermath of a suicide attempt.

5.1.3.3 Victim-Offender Mediation

Restorative justice practices, such as victim-offender mediation, should be integrated into diversion programs and legal processes involving individuals who have attempted suicide. Victim-offender mediation provides an opportunity for survivors and offenders to engage in facilitated dialogue, express their perspectives, and work towards mutual understanding and resolution. By facilitating communication and reconciliation, victim-offender mediation can help survivors heal from the trauma of their experience and promote accountability and responsibility among offenders.

5.1.3.4 Community Conferencing

Community conferencing is another restorative justice practice that can be utilized in cases involving suicide attempts. Community conferencing brings together survivors, offenders, and relevant stakeholders to discuss the impact of the offence, address underlying issues, and develop a plan for repair and restitution. By involving the broader community in the resolution process, community conferencing can foster a sense of collective responsibility and support for individuals affected by suicide attempts, promoting healing and resilience within the community.

5.1.3.5 Restitution and Community Service

Restorative justice approaches should prioritise restitution and community service as means of repairing harm and promoting accountability among offenders. Restitution may involve financial compensation or other forms of reparative action aimed at addressing the tangible and intangible losses experienced by survivors and their families. Community service provides offenders with an

opportunity to contribute positively to their communities and demonstrate their commitment to making amends for their actions. By emphasizing restitution and community service, restorative justice approaches can promote healing, reconciliation, and meaningful resolution for all parties involved in cases of attempted suicide.

5.1.4 Community services

5.1.4.1 Peer Support Programs

Community-based peer support programs can play a crucial role in providing emotional support, empathy, and understanding to individuals who have attempted suicide. These programs connect survivors with peers who have experienced similar challenges, creating a supportive environment where individuals can share their experiences, offer encouragement, and learn coping strategies. By fostering a sense of belonging and solidarity, peer support programs help reduce feelings of isolation and promote healing and recovery among survivors.

5.1.4.2 Support Groups

Support groups facilitated by mental health professionals or trained volunteers can provide a safe space for survivors to express themselves, process their emotions, and receive validation and encouragement from others who have been through similar experiences. These groups may focus on specific issues related to suicide attempts, such as coping with stigma, managing triggers, and developing resilience. By offering a forum for mutual support and learning, support groups empower survivors to navigate their recovery journey and rebuild their lives with confidence and resilience.

5.1.4.3 Counselling and Therapy

Access to counselling and therapy services is essential for individuals affected by suicide attempts to address underlying mental health issues, learn coping strategies, and develop resilience. Community-based mental health clinics and counselling centres can provide affordable and accessible services tailored to the needs of survivors and their families. Therapy modalities such as cognitive-behavioural therapy (CBT), dialectical behaviour therapy (DBT), and trauma-

informed care can help survivors process their experiences, manage distressing symptoms, and build skills for emotional regulation and self-care.

5.1.4.4 Crisis Intervention Services

Community-based crisis intervention services offer immediate support and assistance to individuals in acute distress, including those at risk of suicide. Crisis hotlines, mobile crisis teams, and walk-in crisis centres provide round-the-clock access to trained professionals who can assess risk, provide emotional support, and connect individuals with appropriate resources and services. By offering timely intervention and support, crisis intervention services help prevent suicides and promote safety and well-being in the community.

5.1.4.5 Multi-Sectoral Collaboration

Effective community support services for individuals affected by suicide attempts require collaborative partnerships between government agencies, healthcare providers, community organizations, faith-based groups, schools, and other stakeholders. By working together, these partners can leverage their unique strengths and resources to develop comprehensive, coordinated, and culturally responsive services that meet the diverse needs of survivors and their families. Collaboration also enables the sharing of best practices, data, and expertise, facilitating continuous improvement and innovation in service delivery.

5.2 Conclusion

In conclusion, the exploration of the decriminalization of attempted suicide and the adoption of restorative justice principles offers valuable insights into the complexities of responding to mental health crises within the criminal justice system. By examining the experiences of India, Ghana, and Kenya, we have identified opportunities for legislative reform, awareness-raising, and the integration of restorative justice approaches.

The shared colonial history and subsequent legal legacies underscore the importance of contextually relevant responses to mental health challenges. Legislative reforms, such as those witnessed in India and Ghana, demonstrate the potential for transformative change when prioritizing the rights and well-being of individuals affected by attempted suicide.

Furthermore, the adoption of restorative justice principles presents a promising alternative to punitive measures, emphasising healing, accountability, and community engagement. By

prioritising empathy, understanding, and support, jurisdictions can move towards more compassionate and effective responses to individuals in crisis.

In essence, the recommendations outlined in this chapter aim to guide policymakers, stakeholders, and communities towards a future where individuals affected by attempted suicide are met with understanding, support, and opportunities for healing and restoration. By working collaboratively towards these goals, we can create a society that values mental health, empathy, and justice for all.



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