

**Title** : Decriminalizing Suicide: A Legal Study in Malaysia

**Author(s)** : (1) Alif Danial Bin Ahmad Shahrulnizam, (2) Muhammad  
Zulhaniff Bin Mohamed Anas

**Institution** : University Sultan Zainal Abidin (UniSZA)

**Category** : Article, Competition

**Topics** : Education, law

# **DECRIMINALIZING SUICIDE: A LEGAL STUDY IN MALAYSIA**

ALIF DANIAL BIN AHMAD SHAHRULNIZAM

MUHAMMAD ZULHANIFF BIN MOHAMED ANAS

FACULTY OF LAW AND INTERNATIONAL RELATIONS

## **ABSTRACT**

In Malaysia, suicide or attempt to commit suicide being categorized as an offence under section 309 the Penal Code. Despite having benefit on the criminalization of suicide, few issues keep arising as an argument to urge government to decriminalize the act of suicide. This includes the argument on mental health issue as mentioned by World Health Organization, the applicability of an old law and the use of section 309 as a defence towards another criminal liability. This research purposed to study the legal effect of criminalizing the act of suicide with the analysis on the decriminalization of suicide in selected countries (India, Singapore, England) to be adopted in Malaysia by following the initiatives taken. This is a qualitative-based research in which the provision of law, cases and articles are studied. It was found that the decriminalization of suicide is a pleasing and adequate approach in catering the issue of suicide in which, suicide preventive method also one of the roots behind the reason of suicide's criminalization.

*Keywords: Suicide, Decriminalization, Section 309, Penal Code, India, Singapore, England, World Health Organization, Criminalization, Criminal Liability*

## LIST OF CASES

1. *Tompo bin Yara v Public Prosecutor* [2017] 2 MLJ 366
2. *Regina v Doody* [1854] 6 Cox C.C 463
3. *Gian Kaur v State of Punjab* [1996] AIR SC 946

## LIST OF STATUTES

1. Malaysian Penal Code, Act 574
2. Suicide Act 1961
3. Indian Penal Code, Act 45
4. Mental Healthcare Act 2017
5. Singapore Penal Code, Act 2012
6. Subordinate Courts Act 1948
7. Mental Health Act 1983
8. Homicide Act 1957
9. Mental Health Act 2001

## TABLE OF CONTENT

DECLARATION BY STUDENTS .....	i
LETTER OF SUBMISSION .....	ii
ACKNOWLEDGEMENT .....	iii
ABSTRACT .....	iv
LIST OF CASES.....	v
LIST OF STATUTES .....	vi
CHAPTER 1: INTRODUCTION .....	1
1.1 Background of study.....	1
1.2 Problem statements.....	2
1.3 Research objectives .....	2
1.4 Research questions.....	2
1.5 Literature review .....	3
1.6 Research Methodology.....	7
1.7 Research Significance .....	8
1.8 Research Scope .....	9
CHAPTER 2: THE LEGAL EFFECT OF CRIMINALIZING SUICIDE IN MALAYSIA .....	10
2.1 The Law in Malaysia.....	10
2.2 The legal effect of criminalizing suicide in Malaysia .....	11
2.3 Analysis on why the act of suicide becomes a crime in Malaysia .....	14
2.4 Problems arise from the criminalization of suicide in Malaysia .....	15
CHAPTER 3: THE LEGAL POSITION OF SUICIDE IN OTHER COUNTRIES.....	19
Analysis of the legal position of suicide in other countries.....	19
3.1.1 England .....	19
3.1.2 India .....	22
3.1.3 Singapore .....	24
3.2 Comparisons between countries that criminalized and decriminalized the act of suicide .....	27
3.3 Analysis on the implementation of other country frameworks regarding suicide in Malaysia.....	30
CHAPTER 4: RECOMMENDATIONS.....	34
4.1 The need of decriminalization of suicide in Malaysia.....	34
4.2 Amending other legislation related to the offence of the attempted suicide .....	35
4.3 Improving current provision by providing a clear differences of attempted suicide .....	35
4.4 The support from the government and NGOs .....	36

CHAPTER 5: CONCLUSION.....	38
REFERENCES.....	40

## CHAPTER 1: INTRODUCTION

### 1.1 Background of study

Suicide is death caused by the intention of dying by hurting oneself, while an attempt to commit suicide is when someone hurts themselves, intending to end their lives, but because of their acts, they do not die.<sup>1</sup> According to the World Health Organization (WHO), one of the top 10 causes of death is suicide and is the second biggest cause of death among those aged between 15 and 29.<sup>2</sup> In Malaysia, an attempt to commit suicide is classified as a crime under section 309 of the Penal Code (the Code), which can be punished with imprisonment for a term that may be extended to one year or with fine or with both. The section has imposed the offence that stated that the person who attempts to commit suicide and does any act towards the commission of such offence would be liable for the punishment indicated in the same section.

The section is in *pari materia* with the Indian Penal Code, and it was enacted in 1936 following the British Common Law.<sup>3</sup> The section is influenced by religious belief as the British Common Law held that suicide is sinful and wrong.<sup>4</sup> In Malaysia, the idea is also shared by most religious teaching practices. Therefore, the section serves as a deterrent tool for the person who has suicidal thoughts. However, the situation has now changed as suicide is no longer considered a crime in certain countries. Suicide now has become a mental health issue that needs to cope with and treat. But the position of the criminalization of suicide in Malaysia is remaining unchanged.

---

<sup>1</sup> "Preventing Suicide |Violence Prevention|Injury Center|CDC" (Centers for Disease Control and Prevention April 21, 2020) <https://www.cdc.gov/violenceprevention/suicide/fastfact.html>, accessed November 15, 2020

<sup>2</sup> Suicide" (World Health Organization) <<https://www.who.int/news-room/fact-sheets/detail/suicide>> accessed June 20,2020

<sup>3</sup> Act 574 Penal Code, [2015]

<sup>4</sup> Biggar N, Aiming to Kill: The Ethics of Suicide and Euthanasia (Darton Longman and Todd 2004)

## **1.2 Problem statements**

The criminalization of suicide seems to be so harsh since it punishes the individuals who attempted to commit suicide, which was affected by several factors, including mental illnesses, substance and alcohol abuse, chronic disease, history of attempted suicides, suffering from depression, and loneliness.<sup>5</sup>

Also, the law of the attempted suicide is considered an archaic law since it does not develop according to current times.<sup>6</sup>

Therefore, there is a need for a model or framework from other countries that decriminalized suicide to be examined and considered its appropriateness before it can be recommended to be adopted or referred towards legal implementation in Malaysia.

## **1.3 Research objectives**

1. To study the legal effect of criminalizing the act of suicide in Malaysia.
2. To examine the legal position of the act of suicide in other countries.
3. To suggest recommendation towards the position of the act of suicide in Malaysia

## **1.4 Research questions**

1. Does the criminalization of the act of suicide provide a pleasing and considerable effect on Malaysia's society?
2. What is the approach taken by other countries regarding the act of suicide?
3. What is the excellent approach to cope with the problem of criminalization of suicide in Malaysia?

---

<sup>5</sup> Suicide" (World Health Organization) <<https://www.who.int/news-room/fact-sheets/detail/suicide>> accessed June 20,2020

<sup>6</sup> Jha P, "Will Malaysia End Its Archaic Suicide Law?" (The Diplomat, June 26, 2019) <<https://thediplomat.com/2019/06/will-malaysia-end-its-archaic-suicide-law>> accessed November 15, 2020



## 1.5 Literature review

The first article is “The Endgame of Section 309, An Appeal for Decriminalisation of Suicide,” written by Ng Yin Ping and Ravivarma Rao Panirselvan. In this article, the researchers mentioned several key points highlighted. The article was focusing on the need for Malaysia to decriminalize suicide. Before going into the topic, the researchers first stated the history and the reason for implementing section 309 in Malaysia. The researchers then mention the factors that influence suicidal behavior. Also, the article concerned on punishing those who had attempted suicide may worsen the suffering instead of helping them.<sup>7</sup> The article drew whether decriminalizing suicide would encourage more suicide attempts or not. According to Mishara and Weissman, the question has been answered to date, and no data shows that decriminalization increases suicide.<sup>8</sup> The rates seem to decrease after the implementation of decriminalizing suicide. In this research, the researcher also mentioned why Malaysia should decriminalize suicide attempts. It is based on the evidence that decriminalization is an advanced move to help people who suffer from a crisis or other factors that lead to suicide.

The second article, entitled “Decriminalisation of Suicide Attempt under Section 309 of the Penal Code, Is Malaysia Ready?” was written by Norashikin Shariffudin and Hazlina Mohd Padil. In this article, the researchers examined the cases involving section 309 of the Penal Code by analyzing the significance of such section whether to stay enforce, amend, or repeal in Malaysia.<sup>9</sup> The researchers also stated the detailed examination and in-depth discussion by comparing with other countries that had repealed the section's provision to suit the current situation to ensure that the law is relevant. The researcher also highlights the point where decriminalization can

---

<sup>7</sup> Ping NY and Panirselvam RR, “The Endgame of Section 309, An Appeal for Decriminalisation of Suicide” (2019) 28 Malaysian Journal of Psychology

<sup>8</sup> Mishara BL, Weisstub DN. The legal status of suicide: A global review. *Int J Law Psychiatry*. 2016; 44:54-74. Epub 2015/09/17. doi: 10.1016/j.ijlp.2015.08.032. PubMed PMID: 26375452.

<sup>9</sup> Shariffuddin N and Padil HM, “Decriminalizing of Suicide Attempt under Section 309 of the Penal Code: Is Malaysia Ready?” (2020) 3 *Insla E-Proceeding* 86

significantly impact patients with mental disease, which led to many decided to end their lives without realizing or ignoring the law that sanctions those who attempted suicide.

In the third article, "The legal status of suicide: A global review" by Brian L Mishara N. Weisstub, the discussion has been focused on the matter of criminalizing and decriminalizing suicide. The analysis focused on the importance and relevancy of decriminalizing suicide, which has been compared from one country to another. This article started by explaining the status of suicide from a global perspective with the acknowledgment towards the history and reason behind the criminalizing suicide in the past, or to be exact, at the beginning of the nineteenth century.<sup>10</sup> During that time, the article mentions that most of the country had imposed laws that provided punishment, including jail sentences for persons who attempted suicide. The sentence on an attempt to commit suicide may be perceived as having a practical value in reducing crime or repeating a socially sanctioned act. However, today, no empirical data support the belief that the threat of incarceration has a preventive effect. Because of that, throughout the analysis, debates, and discussion, decriminalizing suicide has concerned many people. Among the arising discussion, this article did focus on the argument that there is a need to promote the decriminalizing suicide in countries with laws that treat suicide attempters as criminals rather than having mental health issues that need support help regarding mental care. This article also mentioned and discussed the countries that have been decriminalized suicide, such as India, which announced the decision in 2014 by removing section 309, so this portrait Malaysia still uses the archaic law.

Based on research, most of the article that mentioned the decriminalization of suicide is based on other country perspectives. There are few sources and writing

---

<sup>10</sup> Mishara BL and Weisstub DN, "The Legal Status of Suicide: A Global Review" (2016) 44 International Journal of Law and Psychiatry 54

about this topic from the research scope, which is in Malaysia. However, the research found several points that past researchers need to discuss, but they had failed to do so. First, regarding the history towards the enactment of section 309, where the researchers only mentioned the history of the enacted provision, not the reason and why the provision exists in the first place. The section's application is based on a real-life case where it is only reported by a newspaper or blog rather than a case law journal. The section's extension is too limited as it is an issue that hotly been debated by people. The third issue that can be highlighted is the case or rate statistic, which is not in detail but only in general. The researchers only mentioned the rate based on analysis of another article journal. Lastly, the past researchers' articles did not mention the elements of suicide on why it is a crime. Most of the articles only mentioned that the act of suicide is wrong based on their analysis of section 309 on the surface, not in-depth. It would give several questions on the elements of suicide in section 309 of the Penal Code.

Based on the research using online resources, most of the researchers have categorized these countries into two divisions: the country that criminalizes and decriminalizes the offense. Several countries considered suicide and attempted suicide are crimes. In several African countries, Kenya, Malawi, Nigeria, Rwanda, Ghana, and Uganda are among the countries that criminalize suicide.<sup>11</sup> For example, in Uganda, suicide is punishable by up to two years of imprisonment.<sup>12</sup> In Asian countries, Bangladesh, Brunei, and North Korea are the countries that considered suicide and attempt suicide is a crime. In North Korea, since they cannot punish the dead person, the deceased's family may be punished as it served as collective punishment. Several countries punish the person who assisted in suicide or attempt suicide. While in Asian

---

<sup>11</sup> Margaret, S. A., Fara Azida & Lee Mah Nge, "Suicidal Prevention Using Jurisdiction", *International Journal of Business, Economics and Law* 1 (2012): 98-103, 11 November 2018 <<http://ijbel.com/wpcontent/uploads/2014/06/Suicidal-Prevention-Using-Jurisdiction-S.Annie-Margaret.pdf>>.

<sup>12</sup> Schlegel L & Burrows S. "Suicide attempts in Africa". *Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective*. Oxford: Oxford University Press; 2009. pp. 105–8.

countries, such as Japan, suicide is considered illegal, but it is not punishable. However, assisted suicide is considered illegal, and anyone who is caught assisting will be punished. China also considers this as an offence where any form of assisted suicide, which includes euthanasia, is illegal. In European countries, Romania, for example, suicide is not illegal; however, encouraging or helping the suicide of another person is a crime and can be punished by up to ten years in prison.<sup>13</sup>

According to World Health Organization,<sup>14</sup> they had identified over 50 countries across the world that have decriminalized the offence. For example, in some European countries such as Norway where suicide or suicide is not criminalized.<sup>15</sup> Besides, the United Kingdom, where Malaysian criminal law had derived from, has a Suicide Act 1961 in which it introduced to decriminalized suicide in England and Wales.<sup>16</sup> In South Africa, suicide or attempt at suicide is no longer considered a crime. It was illegal from 1886 to 1968, but this legislation had been abolished. In Asia, Hong Kong had decriminalized suicide since 1967. They have implemented suicide prevention and strategies by several agencies.<sup>17</sup> India, where our Penal Code was adopted the Indian Penal Code has passed a Bill that modifies and struck down the suicide law in Section 309 of the Indian Penal Code. Now, attempt suicide is no longer an offence in India.<sup>18</sup> India also passed the Mental Healthcare Act in 2017<sup>19</sup> where this act aiming to decriminalize suicide and attempted suicide and offered the victim for mental health care and rehabilitation.

---

<sup>13</sup> Ibid

<sup>14</sup> Reetu S, "Know in Which Countries Committing Suicide Is Legal and Illegal" (<https://www.oneindia.com> December 10, 2014) &lt; <https://www.oneindia.com/india/know-which-countries-suicide-is-legal-illegal-1588243.html>&gt; accessed June 24, 2020

<sup>15</sup> World Health Organization (WHO), Suicide prevention 2012 [http://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/index.html](http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/index.html) accessed June 20, 2020

<sup>16</sup> Ibid

<sup>17</sup> L T, "Failing to Commit Suicide in Malaysia Is a Crime...but Why?" (Ask Legal February 5, 2020) &lt; <https://asklegal.my/p/suicide-crime-malaysia-penal-code-section-309>&gt; accessed June 24, 2020

<sup>18</sup> Reetu S, "Know in Which Countries Committing Suicide Is Legal and Illegal" <<https://www.oneindia.com/india/know-which-countries-suicide-is-legal-illegal-1588243>> accessed June 24, 2020

<sup>19</sup> Sneha V, Madhusudhan S, Prashanth N R, Chandrashekar H. Decriminalization of suicide as per Section 115 of Mental Health Care Act 2017. Indian J Psychiatry 2018; 60:147-8

## 1.6 Research Methodology

In terms of research methodology, doctrinal research is a kind of research that focused on legal proposition and doctrines. It is also commonly known as library-based research, where it is the most common methodology applied in undertaking law research.<sup>20</sup> Doctrinal research can be referred to as theoretical, pure legal, academic, traditional, conventional, armchair research, which means that researchers' materials may be found in the libraries, archives, and other databases. Such research aims to discover, explain, examine, analyze, and present in a systematic for facts, legal position or the working of certain laws or legal institutions. This type of research includes legal concepts and principles of all types, which are cases, statutes, and rules. In this research, those sources will be used in making a legal study regarding the issue of decriminalizing suicide in Malaysia.

The most suitable method to be used regarding data preparation and analysis is the qualitative-based approach with content analysis. Qualitative base research is a systematic examination where can be focused on the issue of decriminalizing suicide that has been recorded in some document or form, such as book, newspaper, or any other medium. Furthermore, for qualitative research, the data collected are in the form of notes or some form of textual material. It involves data in the form of words, descriptive or narratives.<sup>21</sup> Besides, the research also adopted an analytical approach that involves a careful examination and evaluation on the legal position of suicide to understand or explain it or draw inferences and conclusions from it. Law is a responsive basic nature to guide to a better society. However, as a society facing challenges from time to time and the law keeps confronting new consequences, the existing law often found inadequate or inappropriate to overcome the issue. Thus, the

---

<sup>20</sup> Ali, Salim & Mohamed Yusoff, Zuryati & Yusoff, & Zainal, Dr & Ayub, Zainal, 'Legal Research of Doctrinal and Non-Doctrinal' (2017). 4. 2394-9333.

<sup>21</sup> Thomas J. Sullivan, *Methods of Social Research*, Orlando FL: Harcourt College Publishers, 2001, p.20.

purpose of the research has been focused on analyzing and examining the nature, purpose, and adequacy of law regarding the issue of suicide in Malaysia.

Primary sources are the government's actual laws, like in the form of constitutions, court cases, statutes, and regulations. Meanwhile, secondary sources are a source in which the law was being restated, but it included discussion, analysis, description, explanation, and criticism.<sup>22</sup> The analysis was conducted based on the research objectives where for the first objective, the internet research will be conducted.

Here, this paper analyzes and studies the local cases of attempted suicide in Malaysia through online newspaper excerpts or magazines. For the second objective, several discussions and studies online on related books and other references to gain information about the other countries in which they decriminalize the offence of attempted suicide were conducted. There also conducted a study on the challenges of decriminalising suicide in Malaysia by analyzing the articles or opinions written by scholars or authorities.

### **1.7 Research Significance**

The researchers hope that this study will benefit the future researcher, policymaker, human rights lawyer, and public. This research is also significant to the researchers as it will contribute to solving or overcoming the problem that arises from the attempted suicide in Section 309 of the Penal Code. This research will play its role as a source for their future study related to this issue. On the other hand, the researchers also hope that this research will give the public insight or clarification about how Malaysian law operates, especially on criminal law, since this research is related to the offence in the

---

<sup>22</sup> Yan Zhang and Barbara M. Wildermuth, 'Qualitative Analysis of Content' <[https://www.ischool.utexas.edu/~yanz/Content\\_analysis.pdf](https://www.ischool.utexas.edu/~yanz/Content_analysis.pdf) >accessed 15 November 2020.

Penal Code. This research will become the basis on how the issue of attempted suicide is highlighted and explains which is fit to the public knowledge.

This research will also benefit the human right lawyer or policymakers as they would refer to this research before pass the Bill or amendment relevant to Section 309 of the Penal Code. This research will also become one of the researches they must study first before proposing the amendment. This research will also encourage the government to take this matter seriously and give them insight into how this problem happened and what needs to be overcome. In the end of the research, the researchers will provide the suggestion by studying the model from the other countries.

### **1.8 Research Scope**

In this research, the researchers focus on the issue of attempted suicide that arises in Section 309 of the Penal Code. The researchers focused on the issue where Section 309 is causing a public problem. The researcher also wants to clarify the issue to give rise to the public, especially policymakers in our government. This study will be mainly identifying the issue and problem in Section 309 of the Penal Code. Other than that, the researcher also briefly focused on the history and reason why Section 309 existed in the first place. This study also aimed to assist future researchers, government, or policymakers in dealing with this issue. Lastly, this study is aimed to gain informations on how other countries deal with this problem and suggest a mechanism to implement in Malaysia.

## CHAPTER 2: THE LEGAL EFFECT OF CRIMINALIZING SUICIDE IN MALAYSIA

### 2.1 The Law in Malaysia

In Malaysia, most criminal offences are governed by the Penal Code provisions (the Code), or in Malay, it is known as *Kanun Keseksaan*. It was enacted in 1936 and revised in 1997.<sup>23</sup> The Code stated the acts or omission in specified circumstances where it is regarded as a crime.<sup>24</sup> The offences include the act or omission which done intentionally, voluntarily, fraudulently, knowingly, and dishonestly. The Code also mentioned the nature and amount of the punishment imposed for each offence. In its current form, the Code is divided into twenty-three chapters and consists of five hundred and eleven sections. The provisions in the Code have been classified into several types of offences, such as the offences affecting the human body, affecting other people's property, affecting the reputation, affecting public peace, and those affecting public health and safety.<sup>25</sup> The Penal Code in Malaysia is *pari materia* with Penal Code in India. Thus, the Code provisions are derived from English Law, the Common Law considering that India's legal system was influenced by the British.<sup>26</sup>

The provision that governs the act of suicide in Malaysia is Section 309 of the Code. The section states, "whoever attempts suicide and does any act towards the commission of the offence; shall be punished with imprisonment for a term may extend to one year or with fine or with both."<sup>27</sup> The history of enacting such a provision has given two important rationales that can be considered. The first is protecting the value of human life<sup>28</sup> and the survival of law and order in society. The Code acted as the medium to prevent suicide by placing the act as a crime and punishing those who commit it. By looking at the history of the criminalization of suicide in Malaysia, imposing charges against the person who commits attempted suicide is seen as

---

<sup>23</sup> [https://en.wikipedia.org/wiki/Penal\\_Code\\_\(Malaysia\)](https://en.wikipedia.org/wiki/Penal_Code_(Malaysia))

<sup>24</sup> Mohamad Shariff bin Hj. Abu Samah and Ali ABHM, *Alman: Criminal Law in Malaysia* (International Law Book Services 2017)

<sup>25</sup> Haji Mohamad Hasan AR, "The Administration of Criminal Justice in Malaysia: The Role and Function of Prosecution" [2019] 107th International Training Course Participants' Papers 247

<sup>26</sup> Act 574 Penal Code, [2015]

<sup>27</sup> *Ibid*

<sup>28</sup> "Home" (RELATE) &lt; <https://www.relate.com.my/>&gt; accessed December 30, 2020



effective deterrence for the offender.<sup>29</sup> It is mentioned earlier that the Code is in *pari materia* with the Indian Penal Code. Therefore the law was adopted following the England law or known as Common Law. The Common Law relied heavily on religious belief where suicide is a sin and condemned by the religious people. It is also wrong and considered an offence against God because God determines life, and taking one's own life is against God's will. This belief was adopted and incorporated in the Indian Penal Code.

Consequently, Malaysia also adopted the same provision as this belief is similar to Malaysia's most religious teachings.<sup>30</sup> Therefore, based on this research, there are two main reasons why Section 309 is implemented in Malaysia. First, the reason for the survival of the religious beliefs and to fulfill God's will as taking a human life on their own is a prohibited act. Second, the purpose of this law enacted is to curb the problem of suicide rather than continue to be rampant.<sup>31</sup> Besides, criminalizing and punishing one for attempting suicide was intended as a deterrent effect to others who might be contemplating suicidal behavior.<sup>32</sup>

## **2.2 The legal effect of criminalizing suicide in Malaysia**

According to Mishara and Weisstub, the rationale behind criminalizing suicide is to serve as a mechanism to discourage any person who intends to resort to suicide as a solution.<sup>33</sup> In Malaysia, Section 309 of the Code has clearly stated that any individuals who have been convicted of the offence can be punished imprisonment for a maximum of one year or a fine, or both. Based on this provision, those who commit suicide or attempt suicide can be brought to court and be punished. The court that has

---

<sup>29</sup> Choong TC and Fung MCP, "Reconciliation of Law and Medicine with Reference Made to Section 309 of the Penal Code" 49 *Malayan Law Journal* Article 1

<sup>30</sup> Sharifuddin N and Padil HM, "Decriminalizing of Suicide Attempt under Section 309 of the Penal Code: Is Malaysia Ready?" (2020) 3 *Insla E-Proceeding* 86

<sup>31</sup> *Ibid*

<sup>32</sup> Mishara BL and Weisstub DN, "The Legal Status of Suicide: A Global Review" (2016) 44 *International Journal of Law and Psychiatry* 54

<sup>33</sup> *Ibid*

jurisdiction to try the offence is the Magistrate Court. Under Section 88 of the Subordinate Courts Act 1948, the Second-Class Magistrate has the jurisdiction to try criminal offences where the maximum term of imprisonment provided by the law does not exceed twelve months of imprisonment offences is punishable by fine only.<sup>34</sup> The convicted person will be granted time if the punishment consists of a fine. Paying the fine or finding support from nearby relatives to settle the debt. He would have to serve a default term in jail if he cannot pay. The sentence is one of incarceration, and the court will grant a warrant of commitment to the prison authorities. The prisoner will be escorted to the assigned prison and complete his sentence there.<sup>35</sup>

However, the implementation is far from the reality in its application. Since the provision serves as a deterrent for the person from committing suicide, there are cases where the provision is used as a defense or shield to avoid criminal liability.<sup>36</sup> For example, in *Tompo bin Yara v Public Prosecutor*<sup>37</sup>, the accused was charged with the murder of his wife and attempted to commit suicide. During defense, the counsel claimed that he had acted under 'grave and sudden provocation,' and it can be seen where he attempted to commit suicide. It has shown that he had lost his self-control and suffered during the committed offence. He pleads to the charge for attempted suicide, and he admitted that he killed his wife. The court held that the charge of murder is a reduced offence of culpable homicide not amounting to murder under section 304 (a) of the Code. According to Latha and Geetha, existing laws should not allow any party to encourage suicide and taking one's life, even if it is his own life.<sup>38</sup> However, in Malaysia, the punishment, which consisting imprisonment or a fine, is not considered

---

<sup>34</sup> Abdullah NC, Questions & Answers on Malaysian Courts, Statutes, Cases & Contract, Tort, and Criminal Law (International Law Book Services 2009)

<sup>35</sup> Haji Mohamad Hasan AR, "The Administration of Criminal Justice in Malaysia: The Role and Function of Prosecution" [2019] 107th International Training Course Participants' Papers 247

<sup>36</sup> "Suicide: A Tragedy or a Crime?" (UMLR | University of Malaya Law Review) &lt; <https://www.umlreview.com/lex-in-breve/suicide-a-tragedy-or-a-crime&gt;>; accessed December 30, 2020

<sup>37</sup> [2017] 2 MLJ 366

<sup>38</sup> Latha KS and Geetha N, "Criminalizing Suicide Attempts: Can It Be a Deterrent?" (Medicine, science, and the law, October 2004) &lt; <https://www.ncbi.nlm.nih.gov/pubmed/15573973&gt;>; accessed December 2, 2020

enough since the person has already intended to commit suicide as the state of mind remains the same.<sup>39</sup> The punishment does not serve as a deterrent but only as a pause before committing the act again in the future. Former Deputy Inspector General of Police Tan Sri Ismail Omar stated that even though some people were attempting suicide, the police are still not enforcing the law. According to him, attempted suicide is not considered a crime. It must be dealt with delicately. The offender needs proper help instead of being subject to imprisonment or a fine.<sup>40</sup>

Therefore, based on this research, it can be submitted that the effect of criminalizing the act of suicide in Malaysia has raised mixed reviews and comments from the aspects of its practicality or theoretically. For example, in one reported case in a local newspaper where a disabled man was sentenced to six months in prison for attempted suicide in Kuala Terengganu.<sup>41</sup> This case has caused various reactions from Malaysians, and most of those reactions showed disagreements towards the punishment. Some opinions suggested for the sentence should be reconsidered.<sup>42</sup> It can be seen where there was a call by the rights groups for the punishment to be reviewed as the said conviction stated as absurd and served no public interest for the disabled man who requires assistance for his dire life.<sup>43</sup> Attempted suicide cases reported by the newspaper have become the main focus for the people in Malaysia.

---

<sup>39</sup> Margaret SA and Ahmad Bakri FA, "Suicidal Prevention Using Jurisdiction" (2012) 1 International Journal of Business, Economics and Law 98

<sup>40</sup> Ibid

<sup>41</sup> Yatim N, "OKU Cuba Bunuh Diri Dipenjara Enam Bulan" (Sinarharian, February 2, 2020) &lt; <https://www.sinarharian.com.my/article/68438/KHAS/Isu/OKU-cuba-bunuh-diri-dipenjara-enam-bulan>&gt; accessed December 2, 2020

<sup>42</sup> Mokhtar NA, "Hukuman Penjara OKU Wajar Ditimbang Semula - SUHAKAM" (Berita Harian, February 6, 2020) &lt; <https://www.bharian.com.my/berita/nasional/2020/02/653088/hukuman-penjara-oku-wajar-ditimbangsemula-suhakam>&gt; accessed December 2, 2020

<sup>43</sup> Chan J, "Rights Groups Call for Review of Disabled Man's Attempted Suicide Conviction in Terengganu: Malay Mail" (Malaysia | Malay Mail February 3, 2020) &lt; <https://www.malaymail.com/news/malaysia/2020/02/03/two-groups-call-for-review-of-disabled-mans-attempted-suicide-conviction-in/1834024>&gt; accessed December 30, 2020

### 2.3 Analysis on why the act of suicide becomes a crime in Malaysia

In response to the inquiry on why attempting suicide becomes a crime in Malaysia, the discussion needs to start with the historical background of criminal law in Malaysia. Malaysian Penal Code is in *Pari Materia* with the Indian Penal Code. It subsequently follows the old common law approach in terms of attempted suicide, which reflected a more brutal age.<sup>44</sup> In the 19<sup>th</sup> century, the criminalization of suicidal attempts was actually under religion's influence. According to Christianity believe, only the Creator has the right to destroy life or liberty, which also applies to suicide.<sup>45</sup> From that, English law treats and perceived suicide as an immoral, criminal offence against God and the King.

Furthermore, the suicidal attempt was also being criminalized based on maintaining social order in the rapidly changing circumstances during the 19<sup>th</sup> century in England.<sup>46</sup> The effort towards the enforcement of law and order regarding suicide resulted from the new severity of suicidal behavior in society. In a way, it was a prevention step taken against the person that tries to have an easy escape from the accusation of breaking the law.<sup>47</sup> It is on the basis that in many cases, to avoid punishment for the accused's crime, suicide has been used as a sadistic shield.

For example, this particular act of using suicide as a shield to protect oneself from the punishment was well reflected in the case of *Tompo bin Yara v Public Prosecutor* where the accused attempted to commit suicide by stabbing himself after cruelly doing the same to his wife to escape from punishment by law.<sup>48</sup> He was charged with the murder of his wife and attempted suicide. By criminalizing suicide, the law can

---

<sup>44</sup> Introduction Criminal and Constitutional Law, 'Historical Background of Penal Code - - MMU - StuDocu' <<https://www.studocu.com/my/document/multimedia-university/introduction-to-criminal-and-constitutional-law/essays/historical-background-of-penal-code/2551255/view>>.

<sup>45</sup> Ardy Ayadali and others, 'The Malaysian Perspective on the Criminalization of Suicide' 1.

<sup>46</sup> Joseph Osafo and others, 'Police Views of Suicidal Persons and the Law Criminalizing Attempted Suicide in Ghana: A Qualitative Study With Policy Implications' (2017) 7 SAGE Open 1.

<sup>47</sup> Ibid.

<sup>48</sup> [2017] 2 MLJ 366.

prevent criminals from trying to escape from the criminal liability they may face.<sup>49</sup> If a person who committed the suicidal attempt failed, the criminal will be facing heavier consequences and so prevent a person from committing suicide.

## **2.4 Problems arise from the criminalization of suicide in Malaysia**

The criminalization of suicide indeed have its good in the world of law and order. The reason behind its implementation is to deter the act of suicide, specifically in preventing someone from criminal escape liability.<sup>50</sup> However, several arising issues can also be highlighted from the criminalization of suicide. The issue arising in this particular matter is the existence of the claim that the criminalization of suicide is an archaic law that still applied in Malaysia.<sup>51</sup> The word 'archaic' by definition means extremely old<sup>52</sup>, and the claim that the law regarding suicide is extremely old is on the basis that provision 309 of the Penal Code remained untouched for about 155 years since its enforcement.<sup>53</sup>

In addition to that, currently, the World Health Organisation (WHO) identifies more than 50 countries worldwide that have been decriminalized suicide, including in whole Europe, North America, Most of South America, and parts of Asia.<sup>54</sup> All of the countries mentioned had decriminalized suicide concerning the World Health Organization studies, which categorized mental health issues as the roots of suicide and therefore should be given medical assistance instead of punishment under the

---

<sup>49</sup> S Annie Margaret and Fara Azida, 'Suicidal Prevention Using Jurisdiction' (2012) 1 International Journal of Business, Economics and Law 98.

<sup>50</sup> Ibid.

<sup>51</sup> News straits Times, '[ EXCLUSIVE ] Yeoh: Criminalising Suicide Bid Archaic' 405154 <nst.com.my/news/exclusive/2018/08/405154/exclusive-yeoh-criminalising-suicide-bid-archaic>.

<sup>52</sup> Collins Dictionary, 'archaic'

<<https://www.collinsdictionary.com/dictionary/english/archaic#:~:text=Archaic%20means%20extremely%20old%20or,by%20people%20of%20limited%20outlook>> accessed 31 December 2020

<sup>53</sup> Prakash B Behere, TS Sathyanarayana Rao and Akshata N Mulmule, 'Decriminalization of Attempted Suicide Law: Journey of Fifteen Decades' (2015) 57 Indian Journal of Psychiatry 122.

<sup>54</sup> Deborah Kahn and David Lester, 'Efforts to Decriminalize Suicide in Ghana, India and Singapore' (2013) 4 Suicidology Online 96.

law.<sup>55</sup> As a matter of fact, the key point towards the claim that Malaysia still applied an archaic law. It lies in the facts that India is also one of the countries that already decriminalized suicide. At the same time, Malaysia still uses the said law even though Malaysia has adopted the legislation against suicide from India.<sup>56</sup> Therefore, as long as Malaysia is still criminalizing suicide, the issue of archaic law is used will still arise.

Furthermore, the ground that the act of suicide mostly comes from the person with a problem of mental health is also one of the issues that arise and needs to be discussed. According to the World Health Organization (WHO), a person who tried to commit suicide basically has a mental illness problem, and imposing punishment such as a fine towards that person only will increase the mental health problem resulting from the overstressed.<sup>57</sup> World Health Organization (WHO) also mentions that 79% of global suicides occurred in low and middle-income countries resulting from financial problems and relationship break-up, leading to mental health issues.<sup>58</sup> In that sense, the things that need to be done are having a session with experts in mental health, not to imposed punishment for the suicidal attempt. As a recognition of the World Health Organization (WHO) facts regarding suicide, many countries around the world slowly understand the importance of decriminalizing suicide.<sup>59</sup>

Based on the same reason, India's lower house of Parliament passed the Mental Healthcare Bill 2016 in March of that year, which considers a suicide survivor under extreme stress when committing the act and shall not be punished for it.<sup>60</sup> The Bill states that notwithstanding anything contained in section 309 of the Indian Penal

---

<sup>55</sup> Community for Advocacy & Political Education, 'Case Study #2: Movement to Decriminalise Attempted Suicide' [2019] Activism Archive 1 <<http://cape.commons.yale-nus.edu.sg/wp-content/uploads/sites/108/2019/02/Suicide-Legalization-Campaign.pdf>>.

<sup>56</sup> CJ Armitage and others, 'This Is a Repository Copy of Completed Suicides and Self-Harm in Malaysia: A Systematic Review' [2015] Elsevier <<http://eprints.whiterose.ac.uk/95460/>>.

<sup>57</sup> Bernardo Carpiniello and Federica Pinna, 'The Reciprocal Relationship between Suicidality and Stigma' (2017) 8 *Frontiers in Psychiatry* 1.

<sup>58</sup> World Health Organization, 'Suicide'. (2 September 2019) <<https://www.who.int/news-room/fact-sheets/detail/suicide>> accessed 31 December 2020

<sup>59</sup> Hari D Maharajh and Petal S Abdool, 'Cultural Aspects of Suicide.' (2005) 5 *TheScientificWorldJournal* 736.

<sup>60</sup> Rajeev Ranjan and others, '(De-) Criminalization of Attempted Suicide in India: A Review' (2014) 23 *Industrial Psychiatry Journal* 4.

Code, any person who attempts to commit suicide shall be presumed unless proven otherwise, to have severe stress and shall not be tried and punished under the said Code. Section 2(1)(s) of the Bill defines mental illness as 'a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs.'<sup>61</sup> Hence, by still criminalizing suicide, the objective to deter persons from committing suicide still cannot be achieved as it does not assign the right solution.

In terms of criminalizing suicide did enhance a person's security where there will be decreasing case of suicide, such claim does not even relevant to rely upon. Even by imposing such a law, there is no solid evidence to decrease suicidal attempt cases, let alone the suicide case still increases from time to time. As a prove, before India did decriminalize suicide, according to the report by India National Crime Records Bureau (NCRB), it showed an increased suicide rate per 100,000 of the total population from 6.3 in 1978 to 8.9 in 1990. The reported rate then fluctuated, rising between 2006 and 2011, when it reached 11.2 also in 2015, the total number of suicides in India reached 133,623, with the rate being 10.6 per 100,000 of the total population.<sup>62</sup>

The claim once again becomes not relevant because, according to the data from the countries that have decriminalized suicide, such as Canada and New Zealand, the suicide rates have not even increased after the decriminalization of suicide offence.<sup>63</sup> In addition to that, by decriminalizing suicide, many agencies start to take place to prevent suicide, which may lead to the decreasing suicide case. For example, in Hong Kong, where suicide was decriminalized in 1967, effective suicide prevention

---

<sup>61</sup> Umlawreview, 'Suicide: A Tragedy or a Crime?' 1 <umlawreview.com/lex-in-breve/suicide-a-tragedy-or-a-crime>.

<sup>62</sup> John Snowden, 'Indian Suicide Data: What Do They Mean?' (2019) 150 Indian Journal of Medical Research 315 <ncbi.nlm.nih.gov/pmc/articles/PMC6902359/%0AIndian>.

<sup>63</sup> Ravivarma Rao Panirselvam Ng Yin Ping, 'The Endgame of Section 309? An Appeal for Decriminalisation of Suicide' (2019) 28 Malaysia Journal of Psychiatry.

strategies are implemented by several agencies.<sup>64</sup> Thus, in terms of the implementation, criminalizing suicide itself does not even have a shred of solid evidence that it will achieve the said law's objective. It will become one of the problems in Malaysia as a country that is still criminalizing it without having a different approach to preventing suicides.<sup>65</sup>

---

<sup>64</sup> Ibid.

<sup>65</sup> Ayadali and others (n 45).



## **CHAPTER 3: THE LEGAL POSITION OF SUICIDE IN OTHER COUNTRIES**

### **Analysis of the legal position of suicide in other countries.**

In this chapter, the discussion revolves around the legal position of suicide. Based on the analysis, broad variances in implementation were often noted within countries. Despite the regulations, some nations do not punish suicide attempts, and others consistently convict suicide attempts. In countries where suicide attempts have been decriminalized, where another one is injured or dies because of their suicide attempt, attempters will also face punishment. This discussion is important to compare the legal position of suicide in other countries in terms of its historical background, implementation, and impact of decriminalization of the act of suicide in that countries.

#### **3.1.1 England**

Historically, suicide is considered a sin according to the church, and it has become the sole force in shaping the position of suicide in England. The person who died by suicide will be denied a Christian burial and prayers.<sup>66</sup> The punishment also will be passed down to the deceased family, where their belonging will be stripped and handed to the Crown. It has remained the same for centuries until 1823. The Parliament makes the first change concerning suicide by ending the illogical burial for the bodies causes by suicide practice.<sup>67</sup> The coroners who were issued the warrants for the burial of bodies of suicide in the public highway, private ground, or a churchyard were forbidden and with no Christian rituals. The law was used to arrest and charge the person who attempted suicide. However, the law had no practical effect in terms of its application. There was no change to the law itself, but the law was only applied only in the way. The changes were only covered by the arrest of attempted suicide and

---

<sup>66</sup> Holt G, "When Suicide Was Illegal" (BBC News August 3, 2011) &lt;  
<https://www.bbc.com/news/magazine-14374296>&gt; accessed December 30, 2020

<sup>67</sup> Neeleman J, "Suicide as a Crime in the UK: Legal History, International Comparisons and Present Implications" (1996) 94 Acta Psychiatrica Scandinavica 252

punishable under the common law of *felo de se*. At that time, assisting suicide under Victorian law considered as abetting murder.<sup>68</sup>

The attempt to criminalize the attempted suicide can be seen in *Regina v Doody* case.<sup>69</sup> In this case, it involved a man who tried to attempt suicide in the George Inn's water closet in Wolverhampton. The court stated that the suicide attempt was a misdemeanor. Since the attempted murder is a felony in common law, it turned out that suicide was less extreme than homicide. It is possible to explain why suicide was a crime, and the suicide attempt was a crime punishable by incarceration and hard labor.<sup>70</sup> Throughout the law's implementation on the act of suicide, in the 1830s, on average, the police detained some 50 persons a year for suicide attempts. When the police force extended to colonies, the numbers charged with the crime grew, and an average of 800 persons was arrested for suicide attempts in England and Wales by the 1870s. It was over 1,000 a year in the 1890s and 2,000 in 1910 to 1913.<sup>71</sup> Criminal penalties against suicide attempts have continued to be imposed until 1955.

However, the position changed as England entered the 20<sup>th</sup> century. In 1958, there was a joint suggestion made by British Medical Association and Magistrate Association urged a more humane and merciful view. It stated that the suicide attempters accepted the voluntary treatment, and there was no necessity for legal power to force them to accept the care or treatment. The court also mentioned that to regard the attempted suicide as a serious crime shows that it lacks the entire proportion. A year later, the Church of England react by calling for a change in the law of suicide but at the same time expressed their concern that decriminalization would

---

<sup>68</sup> Moore S, "The Decriminalisation of Suicide." (LSE Theses Online January 1, 1970) &lt;  
<http://etheses.lse.ac.uk/1573/>&gt; accessed December 30, 2020

<sup>69</sup> [1854] 6 Cox C.C. 463

<sup>70</sup> Kerkhof AJ, "Attempted Suicide: Patterns and Trends" *The International Handbook of Suicide and Attempted Suicide* 49

<sup>71</sup> Moore S, "The Decriminalisation of Suicide." (LSE Theses Online January 1, 1970) &lt;  
<http://etheses.lse.ac.uk/1573/>&gt; accessed December 30, 2020

be the same as abetting suicide.<sup>72</sup> The Times was also drawing national attention by publishing an article that stated that suicide was not a crime in Scotland.<sup>73</sup> Therefore, in 1960, guided by their views, new legislation was drafted, and the Suicide Act 1961 has been introduced on 3 August 1961.<sup>74</sup> The act was intended to decriminalize suicide in England and Wales. Under section 1 of the act, the person who failed in an attempt to commit suicide will be no longer prosecuted as the crime was abrogated.<sup>75</sup> However, the abolition of the suicide offence created a new offence where if the person aiding, abetting, or procuring the suicide of another person, in other words, assisted suicide, the person can be punished under imprisonment up to 14 years. It is also treated as manslaughter in Homicide Act 1957.<sup>76</sup> Before the Suicide Act was passed, the government had passed the Mental Health Act. The Mental Health Act was passed in 1959. The act contains both the underlying principle that psychiatric rather than judicial means are more effective for dealing with the mentally ill and that a mechanism for involuntary detention by medical means has been developed.<sup>77</sup>

The legal position of the act of suicide in England is no longer a crime. According to Atkinson,<sup>78</sup> the passing of the Suicide Act 1961 has represented a change from the free-will model. He stated that suicide refers to a matter of free choice and can be punished as an offence to the deterministic model where suicide now can be seen as an uncontrollable and excusable condition caused by mental illness. Governments and non-governmental organizations have undertaken several initiatives to ensure that suicide can be prevented. This initiative results from the

---

<sup>72</sup> Neeleman J, "Suicide as a Crime in the UK: Legal History, International Comparisons and Present Implications" (1996) 94 Acta Psychiatrica Scandinavica 252

<sup>73</sup> Parsons A, "How Suicide Became Legal" (Medium January 31, 2017) &lt; <https://medium.com/@alexparsons/how-suicide-became-legal-327ae26778f2>&gt; accessed December 30, 2020

<sup>74</sup> "Suicide Act 1961" (Wikipedia March 28, 2020) &lt; [https://en.wikipedia.org/wiki/Suicide\\_Act\\_1961](https://en.wikipedia.org/wiki/Suicide_Act_1961)&gt; accessed December 30, 2020

<sup>75</sup> Participation E, "Suicide Act 1961" (Legislation.gov.uk June 1, 1978) &lt; <https://www.legislation.gov.uk/ukpga/Eliz2/9-10/60>&gt; accessed December 30, 2020

<sup>76</sup> Neeleman J, "Suicide as a Crime in the UK: Legal History, International Comparisons and Present Implications" (1996) 94 Acta Psychiatrica Scandinavica 252

<sup>77</sup> "Mental Health Act 1959" (Wikipedia December 22, 2020) &lt; [https://en.wikipedia.org/wiki/Mental\\_Health\\_Act\\_1959](https://en.wikipedia.org/wiki/Mental_Health_Act_1959)&gt; accessed December 30, 2020

<sup>78</sup> "Suicide, Cultural Aspects Of" Encyclopaedia of Human Services and Diversity

decriminalization of the act of suicide that provides medication rather than justification to victims.<sup>79</sup>

### 3.1.2 India

In 1862, in response to the proposition of the first India commission established in 1834 were being under the Charter Act 1833, the Indian Penal Code that was drafted in 1860 has come into force in British-ruled India.<sup>80</sup> This Code stay firm on its ground without any major amendments for more than 150 years in few parts of the jurisdiction.<sup>81</sup> In that sense, reflecting the changes in human behavior and societal belief, a few amendments need to be discussed and done to make it suitable for this era. For example, the amendment of section 377 that has been made follows suitability for the time being.<sup>82</sup> Chapter XVI of the Code mentioned matters regarding the attempt to commit suicide, which is specifically stated in section 309. The provision states that "whoever attempts to commit suicide and does any act toward the commission of such offence, shall be punished with imprisonment for a term which may extend to one year."<sup>83</sup> Since the Code came into force in 1862 until 2017, which marks exactly 155 years, the argument that this particular law relating to the attempt to commit suicide has remained untouched and indeed in need to repeal according to the scientific understanding of the subject and societal attitude keep arising.<sup>84</sup> Consequently, 2017 became the year where India decriminalized suicide concerning the argument of mental health problems.<sup>85</sup>

---

<sup>79</sup> Parsons A, "How Suicide Became Legal" (Medium January 31, 2017) &lt;  
<https://medium.com/@alexparsons/how-suicide-became-legal-327ae26778f2>&gt; accessed December 30, 2020

<sup>80</sup> Behere, Sathyanarayana Rao and Mulmule (n 53).

<sup>81</sup> Ibid.

<sup>82</sup> Ministry of Law and Justice (Legislative Department), 'The Criminal Law (Amendment) Act, 2018' 1.

<sup>83</sup> Indian Penal Code 1860

<sup>84</sup> Behere, Sathyanarayana Rao and Mulmule (n 53).

<sup>85</sup> Kahn and Lester (n 54).

Generally, the view on the attempt to commit suicide had begun to change since 1981, when section 309 of the Code was first criticized by the Delhi High Court as "unworthy of society"<sup>86</sup> In 1994, the Supreme Court also sought the same clause as "irrational and cruel and hence void." Under Article 21 of the Constitution, it held the right to life and liberty must be viewed as including the right to die.<sup>87</sup> However, in *Gian Kaur v State of Punjab (1996) AIR 1996 SC 946*<sup>88</sup>, a five-judge constitutional bench of the supreme court, which then upheld the law in 1996, overruled this previous judgment. Earlier, in its 42nd report, the Law Commission had proposed repealing section 309.<sup>89</sup> In 1971, the Lower House was dissolved in 1978, and the Bill lapsed before the Code (amendment) Bill could be passed. Besides, also the committee in its 156th report<sup>90</sup>, recommending the retention of section 309 after the judgment of Gian Kaur's case, the commission 210<sup>th</sup> report<sup>91</sup> suggested that attempt to commit suicide warranted medical, psychiatric care rather than imposed punishment on such act.

Furthermore, as regards the view of the International Association for Suicide Prevention, the Indian Psychiatric Society, World Health Organisation, and the representations received by the commission from different citizens, the commission recommended that the Indian government initiate measures revoke the anachronistic law found in section 309 of the Code.<sup>92</sup> To decide whether or not section 309 of the Code should be amended, state and UT administration views were taken based on the law commission's recommendations. As a result of a lengthy debate, the decision to abolish section 309 of the Code was declared 10 December 2014.

---

<sup>86</sup> Ministry of Law & Justice, 'Law Commission Recommends Humanization and Decriminalization of Attempt to Suicide' (21 October 2008) <<https://pib.gov.in/newsite/erelease.aspx?relid=43986>> accessed 22 December 2020

<sup>87</sup> Ibid

<sup>88</sup> [1996] AIR 1996 SC 946

<sup>89</sup> Law Commission and Naresh Marotrao Sakhre, 'Report of the Law Commission of India. 42' 275 <<http://lawcommissionofindia.nic.in/1-50/report42.pdf>>.

<sup>90</sup> Law Commission of India, '156th Report on the Indian Penal Code ( Vol1)' 1.

<sup>91</sup> Tideland Signal Corp, 'Report of the Law Commission of India. 210' 2.

<sup>92</sup> Ibid.

To understand the consequences of the decriminalization of suicide attempts in India, it is important to understand why such decisions have been taken concerning mental health issues. Even suicide is a solely personal action without undermining religion, morality, or public policy and does not have a baneful effect on society, suicide is a cry for help in helplessness.<sup>93</sup> Suicide's psychology is profoundly rooted in depression, reflecting the abnormally exaggerated sense of desperation, sorrow, hopelessness, and isolation from society.<sup>94</sup> Physical pain, including the frustration of instinctive demands, social sufferings, and fears or doubt, maybe the cause and motives of suicide.<sup>95</sup> In that sense, the effect or implication towards the decriminalization of suicide in India may need time to be analyzed because it is still new. However, this particular government decision could motivate people to speak about suicidal thoughts in pursuing clinical assistance.<sup>96</sup> As a result, the government and social sector focus has earned a sustainable health initiative to mitigate suicide issues, deal with the problem and play a constructive role in spreading anti-suicide awareness.<sup>97</sup> Therefore, in India's view, the law can never be the full response to the suicide problem as it is a multidimensional issue involving legal, social, and psychological implications. It makes the decriminalization of suicide in India consider and strike to be a reality.

### **3.1.3 Singapore**

The criminalization of suicide in Singapore has the same history as in Malaysia, as Singapore was once under Malaysia before the separation of Singapore- Malaysia in 1965. In the 19<sup>th</sup> century, Straits Settlements, which comprise Penang, Malacca, and Singapore, was majorly applied the criminal law of that United Kingdom, which

---

<sup>93</sup> GK Goswami and Indian Police Service, 'Decriminalizing Attempted Suicide in India: A Paradigm Shift in Approach'.

<sup>94</sup> Ibid.

<sup>95</sup> Johan Bilsen, 'Suicide and Youth: Risk Factors' (2018) 9 *Frontiers in Psychiatry* 1.

<sup>96</sup> Community for Advocacy & Political Education (n 55).

<sup>97</sup> Kahn and Lester (n 54).

customized according to local circumstances. The Straits Settlements Penal Code 1871 was operated in 1872, and the Singapore Penal Code was practically a re-adoption of the Indian Penal Code. Singapore Penal Code originality consisted of English common law, whereby the Indian Penal Code adopted and criminalized the act of suicide.<sup>98</sup> The criminalization of the act of suicide in Singapore was governed by Section 309 of the Code. The provision mentioned the same wording vis a vis with the provision of attempted suicide in the Indian Penal Code.<sup>99</sup>

However, the legal position of the act of suicide has become controversial. The choice to live is one-person choice and liberty. The government has also been portrayed as cruel by imposing harsh punishment on how they should end their lives.<sup>100</sup> Moreover, there was a rarity of the attempted suicide case that has been reported in Singapore. Attempted suicide statute in Singapore only be enforced against repeat offenders where the person repeatedly tries to attempt suicide. A person who attempts suicide is rarely be punished.<sup>101</sup> The courts in Singapore also have discretionary power to order the offender to seek medical treatment instead of punishing them under the Mandatory Treatment Order.<sup>102</sup> The section that criminalizes suicide is used as a help for the people to seek medical treatment in Singapore. Section 309 holds the possibility of prosecution, detention, charges, or penalty, which increases the root cause of suicide rather than decreases anxiety. Section 309 further deters aid searching by facilitating the escalation of all cases to the criminal justice system and alienating those that require support as a seizable crime that triggers mandatory documentation. The arguments that emerge were why to keep the section when it is rarely enforced.

---

<sup>98</sup> Iba, "Attempted Suicide: Tragedy or Crime? A Singapore Case Study" (IBA) &lt; <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=EDD42B58-F007-4BA8-AB12-A0B5D618C9F0&gt;>; accessed December 30, 2020

<sup>99</sup> "A History of The Singapore Legal Service" (Home Page) &lt; <https://www.sal.org.sg/Resources-Tools/Legal-Heritage/A-History-of-the-Singapore-Legal-Service&gt;>; accessed December 30, 2020

<sup>100</sup> Ibid

<sup>101</sup> Lum S, "Penal Code Review Committee: Punishment Not the Answer for People Attempting Suicide" (The Straits Times September 9, 2018) &lt; <https://www.straitstimes.com/singapore/penal-code-review-committee-punishment-not-the-answer-for-people-attempting-suicide&gt;>; accessed December 30, 2020

<sup>102</sup> "Search within Legislation" (Singapore Statutes Online) &lt; <https://sso.agc.gov.sg/Act/CPC2010&gt;>; accessed December 30, 2020

Therefore, there was a call to review the law either relevant or not. The act also poses an additional hurdle for those who intentionally self-harm to seek assistance. Police officers may misinterpret or incorrectly associate intentional self-harm with suicide attempts.<sup>103</sup>

In 2016, a study entitled "Distress is not a crime - Repeal Section 309" in collaboration with World Suicide Prevention Day was issued by AWARE, an NGO body. The study advocated, among other proposals, that Section 309 be repealed or modified. The rationale for these proposals is that the prospect of police prosecution and detention is potentially threatening, that criminalization would inhibit the action of requesting assistance, and that eliminating the duty to arrest would relieve, among other things, considerable pressure on already over-extended police services. They argue that it is the "investment in supportive approaches that encourages behavior in search of help, indicating that human life is precious."<sup>104</sup> In September 2018, a committee was established by the Penal code review committee to review the law on attempted suicide to be repeal and decriminalized.<sup>105</sup> There were recommendations by the committee suggesting that the courts are given the power to order that the individual be detained at a psychiatric institution for treatment. There also suggestions that come up with the police power to intervene if a person tries to attempt suicide to prevent harm or loss of life.<sup>106</sup> Therefore, on 6 May 2019, the act of suicide was officially decriminalized.<sup>107</sup> However, Singapore still follows England's position regarding

---

<sup>103</sup> "Suicide in Singapore" (Wikipedia December 5, 2020) &lt;  
[https://en.wikipedia.org/wiki/Suicide\\_in\\_Singapore](https://en.wikipedia.org/wiki/Suicide_in_Singapore)&gt; accessed December 30, 2020

<sup>104</sup> "Singapore Aims to Complete Review of Laws on Attempted Suicide, Marital Immunity for Rape 'Later This Year': Shanmugam" (CAN January 9, 2018) &lt;  
<https://www.channelnewsasia.com/news/singapore/singapore-aims-to-complete-review-of-laws-on-attempted-suicide-9845154>&gt; accessed December 30, 2020

<sup>105</sup> "Penal Code Review Committee Calls for Law on Attempted Suicide to Be Scrapped" (TODAY online) &lt;  
<https://www.todayonline.com/singapore/abolish-law-attempted-suicide-proposes-committee-tasked-review-penal-code>&gt; accessed December 30, 2020

<sup>106</sup> Ibid

<sup>107</sup> "Criminal Law Reform Bill: A Look at Key Changes in the Penal Code" (TODAY online) &lt;  
<https://www.todayonline.com/singapore/criminal-law-reform-bill-look-key-changes-penal-code>&gt;  
accessed December 30, 2020



abetment or aiding suicide, and attempts suicide is still considered an offence.<sup>108</sup> The legal position of the act of suicide in Singapore is no longer a crime.

### **3.2 Comparisons between countries that criminalized and decriminalized the act of suicide.**

Based on research, it can be submitted there are at least 25 autonomous countries, including Malaysia, where strict rules and sentences for attempted suicide are still in force.<sup>109</sup> In several African countries, Kenya, Malawi, Nigeria, Rwanda, Ghana, and Uganda are among the countries that criminalize suicide.<sup>110</sup> For example, in Uganda, suicide is punishable by up to two years of imprisonment.<sup>111</sup> In Asian countries, Bangladesh, Brunei, and North Korea are the countries that considered suicide and attempt suicide is a crime.<sup>112</sup> In North Korea, since they cannot punish the dead person, the deceased's family may be punished as it served as collective punishment. Several countries considered the punishment for the person who assisted in suicide or attempted suicide. For example, in Asian countries, such as Japan, suicide is considered illegal, but it is not punishable. However, assisted suicide is considered illegal, and anyone who is caught assisting will be punished. China also considers this as an offence where any form of assisted suicide, which includes euthanasia, is illegal. In European countries, Romania, for example, suicide is not illegal; however,

---

<sup>108</sup> Yong M, "Commentary: Decriminalising Attempted Suicide in Singapore Does Not Mean Less Help for Vulnerable People" (CAN August 9, 2020) &lt;

<https://www.channelnewsasia.com/news/commentary/decriminalise-suicide-singapore-penal-code-reform-crime-prevent-12230298&gt;> accessed December 30, 2020

<sup>109</sup> Landau E, "'Time to Decriminalise Attempted Suicide': New Straits Times" (NST Online July 26, 2020) &lt; <https://www.nst.com.my/news/nation/2020/07/611732/time-decriminalise-attempted-suicide&gt;> accessed December 30, 2020

<sup>110</sup> Margaret, S. A., Fara Azida & Lee Mah Nge, "Suicidal Prevention Using Jurisdiction", International Journal of Business, Economics and Law 1 (2012): 98-103, 11 November 2018

<<http://ijbel.com/wpcontent/uploads/2014/06/Suicidal-Prevention-Using-Jurisdiction-S.Annie-Margaret.pdf>>.

<sup>111</sup> Schleich L & Burrows S. "Suicide attempts in Africa". Oxford Textbook of Suicidology and Suicide Prevention: A Global Perspective. Oxford: Oxford University Press; 2009. pp. 105–8.

<sup>112</sup> Ibid

encouraging or helping the suicide of another person is a crime and can be punished by up to ten years in prison.<sup>113</sup>

According to the World Health Organisation, at least 59 countries have decriminalized suicide.<sup>114</sup> In North America, all of Europe, much of South America, and some Asia areas decriminalized attempted suicide. In some European countries such as Norway, where suicide or attempt to suicide is not illegal.<sup>115</sup> It has been mentioned earlier that the United Kingdom, where the current Malaysian Penal Code derived from, has a Suicide Act 1961 in which it is introduced to decriminalized suicide in England and Wales.<sup>116</sup> In South Africa, suicide or attempt at suicide is no longer considered a crime. It was illegal from 1886 to 1968, but this legislation had been repealed and amended. In Asia, Hong Kong had decriminalized suicide since 1967. India has recently passed a bill that modifies and struck down the suicide law stated in Section 309 of the Indian Penal Code. The legal position of attempt suicide is no longer an offence in India.<sup>117</sup>

The differences between the two frames of reference, the country that decriminalizes and criminalize, are suicide rates. There is no evidence-based research that shows that decriminalization raises suicides.<sup>118</sup> The rates, however, continued to decrease after suicide was decriminalized. In countries that have decriminalized the suicide act, there is a cautionary pattern that decriminalization can contribute to a rise

---

<sup>113</sup> Reetu S, "Know in Which Countries Committing Suicide Is Legal and Illegal" (<https://www.oneindia.com> December 10, 2014) &lt; <https://www.oneindia.com/india/know-which-countries-suicide-is-legal-illegal-1588243.html>> accessed June 24, 2020

<sup>114</sup> "World Health Statistics 2016: Monitoring Health for the SDGs" (World Health Organization June 2, 2016) &lt; [https://www.who.int/gho/publications/world\\_health\\_statistics/2016/Annex\\_B/en](https://www.who.int/gho/publications/world_health_statistics/2016/Annex_B/en)> accessed December 30, 2020

<sup>115</sup> World Health Organization (WHO), Suicide prevention 2012 [http://www.who.int/mental\\_health/prevention/suicide/suicideprevent/en/index.html](http://www.who.int/mental_health/prevention/suicide/suicideprevent/en/index.html) accessed June 20, 2020

<sup>116</sup> Ibid

<sup>117</sup> Reetu S, "Know in Which Countries Committing Suicide Is Legal and Illegal" <<https://www.oneindia.com/india/know-which-countries-suicide-is-legal-illegal-1588243>> accessed June 24, 2020

<sup>118</sup> Mishara BL and Weisstub DN, "The Legal Status of Suicide: A Global Review" (2016) 44 International Journal of Law and Psychiatry 54

in suicide reports as the risk of legal consequences for suicide is eliminated.<sup>119</sup> It may be one of the reasons for the rise in the average official 5-year suicide rate in seven countries (Canada, England & Wales, Finland, Hong Kong, Ireland, New Zealand, and Sweden) where, while the reasons for this is cited as unclear, it may be linked to post-decriminalization of suicide.<sup>120</sup> But, according to Lester, based on time series evaluations conducted in Canada and New Zealand, it was found that there was no increase in suicide rates after suicide was decriminalized. Similar studies stated, except in Ireland, that there has been no substantial uptick in suicide deaths since the decriminalization of suicide in Ireland in 1993. Instead, since the decriminalization, the percentages of undetermined death verdicts dropped dramatically.<sup>121</sup> It can be seen that based on comparisons, the evidence above shows that the decriminalization of suicide rates is not worsening. However, this evidence is also insufficient to show that the suicide rate can be reduced or prevented.<sup>122</sup>

Another difference between the countries that decriminalized and criminalized suicide is the establishment of other acts that support the decriminalization of suicide. For example, the Mental Healthcare Act. In India, the Mental Healthcare Act 2017 was enacted 2017 to provide mental healthcare for the person who suffered mental illness by services and treatment.<sup>123</sup> The act also signifies the person who suffered the illness has the dignity to live the life and not be discriminated against and harassed against them. Also, in England, Mental Health Act 1983 is the main statute covering the assessment, treatment, and rights of people with a mental health disorder. The detained person under the act will be given urgent treatment for their mental health

---

<sup>119</sup> Ibid

<sup>120</sup> Lester D, "Decriminalization of Suicide in Seven Nations and Suicide Rates" (2002) 91 Psychological Reports 898

<sup>121</sup> Osman M, Parnell AC and Haley C, "'Suicide Shall Cease to Be a Crime': Suicide and Undetermined Death Trends 1970–2000 before and after the Decriminalization of Suicide in Ireland 1993" (2016) 186 Irish Journal of Medical Science (1971 -) 201

<sup>122</sup> Khan NN and others, "Malaysian Mental Health Law" (BJ Psych international May 1, 2015) &lt; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5618914/> &gt; accessed December 30, 2020

<sup>123</sup> Mishra A and Galhotra A, "Mental Healthcare Act 2017: Need to Wait and Watch" (International journal of applied & basic medical research 2018) &lt; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932926/> &gt; accessed December 30, 2020

disorder and if they are at risk of harm to themselves or others. The act also gives the person the power to be detained and treated without their agreement.<sup>124</sup> In Malaysia, one of the countries that had not yet decriminalized suicide, the same act was also passed and enacted. In August 2001, Parliament in Malaysia passed the Mental Health Act 2001, but it did not affect 2010 when the Mental Health Regulations 2010 came into force. The Mental Health Act 2001 is to be understood alongside the Private Healthcare Services and Service Act 1998 in the private sector. The 2001 Act provides a mechanism for the intensive treatment of people with psychiatric disabilities. It pays for psychiatric hospitals, psychiatric nursing homes, and neighborhood mental health facilities for private and government purposes.<sup>125</sup>

### **3.3 Analysis on the implementation of other country frameworks regarding suicide in Malaysia.**

Historically, the criminalization of suicide in Malaysia is a colonial legacy through the enacted section 309 of the Malaysian Penal Code. It comes from the Penal Code of India, which is based on Britain's Common Law. To analyze the implementation of other country frameworks regarding the act of suicide in Malaysia, it is first to determine the nature and trend of suicidal attempts in Malaysia. Mental health problems are not taken into account during the application of this section 309, which highlights suicide issues. It only focuses mainly on religious prohibition, which is the origin of the legislation that criminalized suicide.<sup>126</sup> As time goes by, countries worldwide are starting to decriminalize suicide based on suicides classified under the mental health issue. It includes Singapore, one of the countries that adopted the Indian Penal Code, just like Malaysia.<sup>127</sup> However, the position towards suicide in Malaysia is

---

<sup>124</sup> (NHS Choices) &lt; <https://www.nhs.uk/using-the-nhs/nhs-services/mental-health-services/mental-health-act/>&gt; accessed December 30, 2020

<sup>125</sup>Khan NN and others, "Malaysian Mental Health Law" (BJ Psych international May 1, 2015) &lt; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5618914/>&gt; accessed December 30, 2020

<sup>126</sup> Ng Yin Ping (n 63).

<sup>127</sup> Ibid.

still confused as there are mixed signals from different authorities. Psychiatric and Mental Health Services Operational Policy of the Ministry of Health explained that if a person is admitted to medical care for a suicide attempt, they are held under close supervision until they are considered a safe condition, not to damage themselves.<sup>128</sup> Indeed, the assertion contradicts the presence of section 309 of the Malaysian Penal Code, where mental health problems in dealing with suicide attempt crime have not even been discussed.<sup>129</sup>

Generally speaking, in three separate countries, Singapore, India, and England, the basis behind the debate on decriminalized suicide is the same as the claim that continues to emerge in Malaysia to resolve and consider mental health.<sup>130</sup> Because of that, organizations such as the Human Rights Society (HAKAM), the Malaysian Mental Health Association (MMHA), and the Malaysian Mental Health Promotion Advisory Council are continually lobbying for the decriminalization of suicide, forcing the federal government to abolish the law.<sup>131</sup> It is not difficult to decriminalize suicide in Malaysia as the legislation and enforcement are not enormously different from Singapore, India, or even England. It has the same origins in its criminalization. Hence, the matters to be considered in decriminalizing such offenses are just on the structure to cater to mental health. "Whether the suicide issue can be dealt with" or "how to deal with the problem where individual attempted suicide based on trying to run from legal punishment" is just a question that needs to be addressed to find the solution.<sup>132</sup> The amended Mental Health (Care and Treatment) Act in Singapore has been the way to decriminalize suicide. As such, persons involved

---

<sup>128</sup> Aziff Azuddin, 'Why Suicide Should Not Be a Crime in Malaysia' (The Centre, 10 October 2020) <<https://www.centre.my/post/suicide-not-a-crime>> accessed 29 December 2020.

<sup>129</sup> Penal Code

<sup>130</sup> World Health Organization, *National Suicide Prevention Strategies*, vol 30 (2018) <<https://apps.who.int/iris/bitstream/handle/10665/279765/9789241515016-eng.pdf?ua=1>>.

<sup>131</sup> Aziff Azuddin, 'Why Suicide Should Not Be a Crime in Malaysia' (The Centre, 10 October 2020) <<https://www.centre.my/post/suicide-not-a-crime>> accessed 29 December 2020.

<sup>132</sup> H Tristram Engelhardt and Michele Malloy, 'Suicide and Assisting Suicide: A Critique of Legal Sanctions.' (1982) 36 *Southwestern law journal* 1003.

in suicide attempts are referred to experts for further steps.<sup>133</sup> At the very least, these would better tend to mental health issues when attempting to drop suicide rates simultaneously.

To incorporate the same idea, the Ministry of Health needs to implement a community-focused program as an initiative to the decriminalization of suicide.<sup>134</sup> Individuals who have committed suicide are redirected to access mental health care from competent authorities, and the screening process begins by step. Improved and continued surveillance becomes a key factor in the sense that suicide may be a re-attempted and inadequate commitment to therapy may raise the risk and provide resources for mental wellbeing and awareness outreach; the Malaysian Ministry of Health needs to also work on managing suicidal behavior incidents. According to studies undertaken in the Middle East, a community-based solution has proven successful in solving mental health problems while reducing the burden on current healthcare services.<sup>135</sup> It has been eight years since the Law Reform Committee spoke about reviewing this provision for the repeal of section 309 of the Code, but until now, no action has been taken. Debates merely continue as an assertion, not to mention without any steps made, the question of mental wellbeing deteriorating from day to day due to no effort to deal with the problem.<sup>136</sup> The legislation and its changes will form the basis of societal reform and henceforth signal to society how to deal with mental health issues without thinking about legal compliance.<sup>137</sup>

All in all, it was possible to introduce the other country framework in Malaysia regarding the decriminalization of suicide because each of the countries addressed

---

<sup>133</sup> Kahn and Lester (n 54).

<sup>134</sup> Penyata Rasmi, 'Dewan Rakyat' [2010] Strategic Trade Act 1.

<sup>135</sup> Saraceno, B., Gater, R., Rahman, A., Saeed, K., Eaton, J. et al. 'Reorganization of mental health services: from institutional to community-based models of care. *EMHJ-Eastern Mediterranean Health Journal*, 21 (7), 477 – 485' (World Health Organization, Regional Office for the Eastern Mediterranean, 2015) <<https://apps.who.int/iris/handle/10665/255240>> accessed 30 December 2020.

<sup>136</sup> AN Hayati and Abdul Aziz Abdullah, 'National Suicide Registry Malaysia: Preliminary Report July-Dec 2007' [2008] Suicide Registry Unit.

<sup>137</sup> Norharlina Bahar and others, 'Suicide among the Youth in Malaysia: What Do We Know?' (2015) 7 *Asia-Pacific Psychiatry* 223.

has the same suicide causes in Malaysia regarding mental health. The only matters to be reconsidered are just on the enforcement system on the legal side, either amending section 309 of the Code with improvement like done by Singapore or deleting it from the Code just like India announcement to decriminalized suicide in 2014. Thus, the decriminalization of suicide should be into Malaysia's government consideration to be repealed while answering the issue of suicide and mental health that is co-related to each matter.

## **CHAPTER 4: RECOMMENDATIONS**

Based on the analysis, to cope with the problems imposed by the criminalization of suicide in Malaysia, there must be appropriate solutions and recommendations. Malaysia, along with other minority of countries in which attempting suicide is still considered a crime and can be punished. The act has now changed in most of Europe, the United Kingdom, India even neighboring countries; Singapore has now decriminalized suicide. The problems imposed by the criminalization of suicide must be settled because it should offer prevention rather than punishment.

### **4.1 The need of decriminalization of suicide in Malaysia**

The first recommendation is the act of suicide should be decriminalized. Instead of punishment, the focus on the offender of the action should be more on access and extensive case professionally. Punishing suicidal attempts does not help to reduce suicide. According to Mishara and Weisstub, the suicide rates of 23 countries in which suicide is criminalized were not higher or lower compared to other countries. The status does not change from the rest of the world.<sup>138</sup> Punishment is not the solution. It is feared that continuing suicide criminalization could discourage survivors of suicide from effectively avoiding suicide. They were seeking assistance, which would, in turn, prolong the start of treatment and lead to deterioration of the treatment with symptoms. Decriminalization of suicide attempts to tackle the issue in a way forward; by putting aside the litigation and punishment, the government can invest in the nation's mental health programs, such as strengthening the National Suicide Prevention Strategy. For example, by equipping first aid responders to provide crisis intervention, setting up community-based mobile crisis intervention programs to appeal to persons who may be present in acute emergencies, and offering a specific help-seeking route to link

---

<sup>138</sup> Mishara BL and Weisstub DN, "The Legal Status of Suicide: A Global Review" (2016) 44 International Journal of Law and Psychiatry 54



those reported by these crisis intervention teams to obtain urgent assistance from qualified mental health practitioners at a specified center.

#### **4.2 Amending other legislation related to the offence of the attempted suicide**

The second recommendation is to amend other legislation, for example, the Mental Health Act 2001 and the Criminal Procedure Code, to solve the problem extensively. The Penal Code committee in Singapore, for example, has proposed a few recommendations which include empowering police officers to act quickly to stop injury or loss of life, enabling the police to apprehend and carry the person who attempted suicide to a medical provider for treatment, and who is considered to be dangerous to himself or others. They also proposed that medical professionals and the courts be given the right to require the person to be held for care at a mental hospital if it is appropriate for protecting the individual or to protect others. Malaysia can follow the recommendation and apply it to realize the response toward the decriminalization of suicide. In amending the Mental Health Act, the government should provide funds for these trials and other suicidal research. This research is useful to recognize high-risk populations and improvements in their suicidal behavior over time and include baseline evidence to test the results of the existing intervention and preventive interventions. With this endeavor, the act will be amended for the public's best interest. The nation can educate its people to recognize that suicide is not a felony but that it is more necessary to address it.

#### **4.3 Improving current provision by providing a clear differences of attempted suicide**

The third recommendation is to improve the current provision by having a clear distinction between suicidal attempts caused by mental health issues and suicidal attempts to run from any other legal punishment. The existing section 309 of the Code

does not even assign matters of mental health, and the sentence is imposed on everyone committing the offence of suicide regardless of the reason carried behind such conduct. The possibility of investigation, detention, charge, and/or penalty is found in section 309, which instead of minimizing anxiety, the root cause worsens, leading to suicide. Section 309 also discourages seeking assistance by facilitating the escalation of all cases to the criminal justice system and alienating those that need help as a seizable crime that triggers mandatory reporting. This recommendation may be made by having a clause that underlines exemption for the punishment of suicides attempted based on the court judgment. The clause can also provide the court with the power to order any conduct that may seem fit for the situation in handling suicidal that have a problem with mental health. In that sense, not only individuals with a mental health issue can be helped by professionals, the issue of suicides attempted on a reason to run from other legal punishment also can be handled.

#### **4.4 The support from the government and NGOs**

The fourth recommendation to materialize the decriminalization of suicide is striking high suicides attempted statistics. The government could have support from NGOs or non-government bodies because the support will strengthen the initiative in decriminalizing suicide while improving suicides statistic in Malaysia. It can be done by making the available services more open for mental health support for wellbeing in the healthcare system. An institutionalized response system for suicide attempts can be developed in simple words. For example, the intervention team can accompany the police in responding to suicide attempts. There can also be an establishment of a psychological support specialist team that can also act as a psychological support unit in a national crisis in which citizens will need large quantities of Psychological aid. Carrying out this recommendation will ensure a more comprehensive policy to encourage those in society's wellbeing and mental health. The goal of suicide

prevention would be best accomplished as the mental health issue's roots are assigned to the right solution, not solely punishment.

## **CHAPTER 5: CONCLUSION**

In conclusion, decriminalization of suicide is a discussion on the relevancy of the existing law that still in use in Malaysia. This study was based on the legal effect of criminalizing suicide in Malaysia compared to suicides legal positions hold in another country, England, India, and Singapore. Historically, the criminalization of suicide materialized on a religious basis but, as time goes, it has become a law to handle an offence of suicide's case from increasing. According to the World Health organization, suicides and mental health hold a close relationship whereby the roots behind such action were based on mental health issues. Hence, the criminalization of suicide does not provide a pleasing effect to Malaysia's society because the punishment for that particular offence does not assign or even consider the issue of mental health. Concerning that, several countries worldwide start to decriminalize suicide even though it was criminalized before. Because punishment imposes on an attempt to commit suicide is not an adequate method in preventing suicide issues at the same time, the law on that particular offence has become an archaic law. It can be proved where section 309 of the Malaysian Penal Code remained untouched since its enforcement.

Moreover, countries have few approaches and initiatives that have decriminalized suicide to cater to a mental health issue and decrease suicide cases. For example, Singapore suggested that the court be given the power to order detention at a psychiatric institution for treatment. There is also an initiative where having NGOs or non-government bodies to joint force in helping to cater to mental health and preventing suicidal attempt. Based on research, it shows that there was no increase in suicide rates after the decriminalization. The data was based on time-series evaluations that have been conducted. Based on that basis, recommendations are highlighted in this research area for decriminalizing suicides. They have suggested an amendment on other legislation such as Mental Health Act 2001, improving current provision, section 309 of the Code and having support from NGOs or non-government bodies to strengthen the initiative in decreasing suicide attempts.

All in all, attempt to commit suicide should be decriminalized in Malaysia as the adequate method of solving suicide is not by imposing punishment but by treating mental health issues from professionals. It is not an impossible matter to be done in Malaysia because India, where Malaysia adopted the Penal Code, had already gone for the decriminalization, not to mention the decision itself is based on the World Health Organization's suggestion in considering the issue of mental health.

## REFERENCES

Armitage C and others, 'This Is a Repository Copy of Completed Suicides and Self-Harm in Malaysia: A Systematic Review' [2015] Elsevier

<<http://eprints.whiterose.ac.uk/95460/>>

Ayadali A and others, 'The Malaysian Perspective on the Criminalization of Suicide' 1

Bahar N and others, 'Suicide among the Youth in Malaysia: What Do We Know?' (2015) 7 Asia-Pacific Psychiatry 223

Behere PB, Sathyanarayana Rao TS and Mulmule AN, 'Decriminalization of Attempted Suicide Law: Journey of Fifteen Decades' (2015) 57 Indian Journal of Psychiatry 122

Bilsen J, 'Suicide and Youth: Risk Factors' (2018) 9 Frontiers in Psychiatry 1

Carpiniello B and Pinna F, 'The Reciprocal Relationship between Suicidality and Stigma' (2017) 8 Frontiers in Psychiatry 1

Commission L and Sakhre NM, 'Report of the Law Commission of India. 42' 275  
<<http://lawcommissionofindia.nic.in/1-50/report42.pdf>>

Community for Advocacy & Political Education, 'Case Study #2: Movement to Decriminalise Attempted Suicide' [2019] Activism Archive 1

<<http://cape.commons.yale-nus.edu.sg/wp-content/uploads/sites/108/2019/02/Suicide-Legalization-Campaign.pdf>>

Corp TS, 'Report of the Law Commission of India. 210' 2

Criminal I and Law C, 'Historical Background of Penal Code - - MMU - StuDocu' <<https://www.studocu.com/my/document/multimedia-university/introduction-to-criminal-and-constitutional-law/essays/historical-background-of-penal-code/2551255/view>>

Engelhardt HT and Malloy M, 'Suicide and Assisting Suicide: A Critique of Legal Sanctions.' (1982) 36 Southwestern law journal 1003

Goswami GK and Service IP, 'Decriminalizing Attempted Suicide in India : A Paradigm Shift in Approach'

Hayati AN and Abdullah AA, 'National Suicide Registry Malaysia: Preliminary Report July-Dec 2007' [2008] Suicide Registry Unit

Kahn D and Lester D, 'Efforts to Decriminalize Suicide in Ghana, India and Singapore' (2013) 4 Suicidology Online 96

Law Commission of India, '156th Report on the Indian Penal Code ( Vol1)' 1

Maharajh HD and Abdool PS, 'Cultural Aspects of Suicide.' (2005) 5 TheScientificWorldJournal 736

Margaret SA and Azida F, 'Suicidal Prevention Using Jurisdiction' (2012) 1 International Journal of Business, Economics and Law 98

Ministry of Law and Justice (Legislative Department), 'The Criminal Law (Amendment) Act, 2018' 1

Ng Yin Ping RRP, 'The Endgame of Section 309? An Appeal for Decriminalisation of Suicide' (2019) 28 Malaysia Journal of Psychiatry

Osafo J and others, 'Police Views of Suicidal Persons and the Law Criminalizing Attempted Suicide in Ghana: A Qualitative Study With Policy Implications' (2017) 7 SAGE Open 1

Ranjan R and others, '(De-) Criminalization of Attempted Suicide in India: A Review' (2014) 23 Industrial Psychiatry Journal 4

Rasmi P, 'Dewan Rakyat' [2010] Strategic Trade Act 1

Snowdon J, 'Indian Suicide Data: What Do They Mean?' (2019) 150 Indian Journal of

Medical Research 315 <[ncbi.nlm.nih.gov/pmc/articles/PMC6902359/](https://ncbi.nlm.nih.gov/pmc/articles/PMC6902359/)%0AIndian>

Times N straits, '[ EXCLUSIVE ] Yeoh : Criminalising Suicide Bid Archaic' 405154  
<[nst.com.my/news/exclusive/2018/08/405154/exclusive-yeoh-criminalising-suicide-bid-archaic](https://nst.com.my/news/exclusive/2018/08/405154/exclusive-yeoh-criminalising-suicide-bid-archaic)>

Umlawreview, 'Suicide: A Tragedy or a Crime?' 1 <[umlawreview.com/lex-in-breve/suicide-a-tragedy-or-a-crime](https://umlawreview.com/lex-in-breve/suicide-a-tragedy-or-a-crime)>

World Health Organization, *National Suicide Prevention Strategies.*, vol 30 (2018)  
<<https://apps.who.int/iris/bitstream/handle/10665/279765/9789241515016-eng.pdf?ua=1>>