

Criminalisation of Attempted Suicide in India Hinders Effective Suicide Prevention Response

Chingsubam Bangkim

Community Health Development, Emmanuel Hospital Association (EHA)
New Delhi, India

Dr. Leah Utyasheva

The University of Edinburgh's Centre for Pesticide Suicide Prevention
Edinburgh, Scotland

ABSTRACT:

It is estimated 187,000 suicide deaths in India in 2010, and almost half of all suicides (92,000) were due to pesticide self-poisoning. Addressing the problem of suicide is hindered by the underreporting due to stigma and fear of negative consequences on the part of survivors and affected families. Status of attempted suicide in India is ambiguous. Section 309 of the Indian Penal Code (IPC) states: "whoever attempts to commit suicide and does any act towards the commission of such offense shall be punished with simple imprisonment or with fine. The Mental Healthcare Act of 2017 introduced a public health approach in India and was heralded as decriminalization of attempted suicide. The Act states, "Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code. Government has a duty to "provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to suicide. Despite the passage of this act, there is no evidence that approach to treating suicide survivors in India has changed. As in cases of suicide and attempted suicide, if a person is admitted to hospital, still staff needs to open medical-legal case (MLC) and report it to the police. Even though Section 309 of IPC is rarely enforced (ref), there is a widely shared perception in the community and among government officials that suicide and attempted suicide is a punishable offence leading to negative consequences and persecution for survivors and affected families. This perception increases stigma associated with suicide, pushes the problem underground by discouraging suicide reporting and help - seeking behaviour.

Close to one quarter of 800 000 individuals who die of suicide worldwide each year¹, die in India.² In 2010, there was estimated 187,000 suicide deaths in India, and almost half of all suicides (92,000) were due to pesticide self-poisoning.³ Addressing the problem of suicide is hindered by the underreporting due to stigma and fear of negative consequences on the part of survivors and affected families.⁴

¹ Mew E, Padmanathan P, Konradsen F, Eddleston M, Chang SS, Phillips M, Gunnel D, The global burden of fatal self-poisoning with pesticides 2006-15: systematic review. *Journal of Affective Disorders* 219 (2017) 93-104.

² The national data only disaggregates self-poisoning into "insecticides" and "other poisons". The lack of a more general "pesticides" category, which also includes rodenticides, fungicides and herbicides, is likely to result in an underestimation of the number of pesticide suicides.

See V. Patel, C. Ramasundarahettige, L. Vijayakumar, J.S. Thakur, V. Gajalakshmi, G. Gururaj, W. Suraweera, P Jha. Suicide mortality in India: a nationally representative survey. *Lancet*, 379 (2012), pp. 2343-2351.

³ V. Patel, C. Ramasundarahettige, L. Vijayakumar, J.S. Thakur, V. Gajalakshmi, G. Gururaj, W. Suraweera, P Jha. Suicide mortality in India: a nationally representative survey. *Lancet*, 379 (2012), pp. 2343-2351. National Crime Records Bureau. Government of India: Ministry of Home Affairs; 2005.

⁴ The national data only disaggregates self-poisoning into "insecticides" and "other poisons". The lack of a more general "pesticides" category, which also includes rodenticides, fungicides and herbicides, is likely to result in an underestimation of the number of pesticide suicides. V. Patel, C. Ramasundarahettige, L. Vijayakumar, J.S.

Thakur, V. Gajalakshmi, G. Gururaj, W. Suraweera, P Jha. Suicide mortality in India: a nationally representative survey. *Lancet*, 379 (2012), pp. 2343-2351.

Status of attempted suicide in India is ambiguous. Section 309 of the Indian Penal Code (IPC) states: “whoever attempts to commit suicide and does any act towards the commission of such offense shall be punished with simple imprisonment or with fine.”⁵ This provision is a vestige of the British legal system, which had a similar provision until 1961 when criminalisation of attempted suicide in the UK was replaced with a public health approach, treating suicide survivors as needing help not punishment.

The Mental Healthcare Act of 2017 introduced a public health approach in India and was heralded as decriminalization of attempted suicide. The Act states, “Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.”⁶ Government has a duty to “provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to suicide”.⁷ Despite the passage of this act, there is no evidence that approach to treating suicide survivors in India has changed.

In cases of suicide and attempted suicide, if a person is admitted to hospital, staff needs to open medical-legal case (MLC) and report it to the police. Village administration needs to report all suspicious deaths to police too. The police usually visit the hospital and relatives to collect information about suicide/attempted suicide from survivors and their families. According to reports, lack of emergency facilities including life-saving medicine, absence of trained health care providers, availability of health care provider during the (during wee hour) in the rural health care settings, frequently prevents help-seeking behaviour. Rural primary health care facilities avoid accepting suicide survivors due to the lack of equipment, and for the fear of families’ harassment and other negative consequences – instead they refer patients to higher-level institutions/facilities which often delayed emergency treatment. If a person dies before reaching health care institution, it is said that relatives prefer to complete the funeral without any reporting. There are reports that even police personnel are often reluctant to open MLC because such cases are time-consuming and maybe lengthy.

Even though Section 309 of IPC is rarely enforced (ref), there is a widely shared perception in the community and among government officials that suicide and attempted suicide is a punishable offence leading to negative consequences and persecution for survivors and affected families. This perception increases stigma associated with suicide, pushes the problem underground by discouraging suicide reporting and help- seeking behaviour.⁸ It also impacts emergency medical treatment by delaying services and by introducing cumbersome reporting procedures.

⁵Section 309 in The Indian Penal Code

⁶The Government of India, Mental Healthcare Act, #10 of 2017, 7 April 2017. Art. 115(1).

⁷Art. 115(2).

⁸Arya V, Page A, River J, Armstrong G, Mayer P. Trends and socio-economic determinants of suicide in India: 2001–2013. *Soc Psychiatry Psychiatric Epidemiology* 2018; 53: 269–78.

There are no data indicating that criminalization of attempted suicide decreases suicides. The 2016 study concluded that countries which criminalise attempted suicide do not have lower suicide rates than other countries. This is despite the fact that reported suicide should be lower where suicide attempts are illegal because of underreporting.⁹ Overall, there is no data supporting the belief that the threat of incarceration or fine has a preventative effect. In fact, the study found that suicide rates tend to decline in countries after decriminalisation.¹⁰

True, that historically in most societies, suicide was viewed as a crime, an offence against society and state, an unacceptable act against God. Religious condemnation of suicide is based on the idea that every life is a gift of God and only he could take it away.¹¹ Self-killers were denied religious burials, punishment ranged from confiscating property to family ostracism, fines and imprisonment.¹²

State's wish to exercise control over its subjects is another reason for criminalisation of suicide, where each step-in citizens' lives needs to be supervised by the centralised state. Historical trends show that with more value given to autonomy and individual agency of a person, states tend to lessen their control over citizens in favour of an individualised approach. From being viewed as an act against society or state, suicide becomes an act against self.¹³

In modern times, ideas of suicide evolved from being considered a "crime" to be a result of psychological illness, with survivors seen as needing help and support, not prosecution. In the UK, shortly after passing of the Suicide Act (1961) which decriminalised attempted suicide, the Ministry of Health issued a recommendation advising all doctors and authorities that attempted suicide was to be regarded as a 'medical and social problem'.¹⁴ As a notable UK judgement indicates, "Suicide itself (and with it attempted suicide) was decriminalised because recognition of the common law offence was not thought to act as a deterrent, because it cast an unwarranted stigma on innocent members of the suicide's family and because it led to the distasteful result that patients recovering in hospital from a failed suicide attempt were prosecuted, in effect, for their lack of success".¹⁵

Historically, both Hinduism and Buddhism while viewing suicide as a sin and an act that produces bad karma, permitted religious or altruistic suicide under certain circumstances. Hinduism regarded fasting to death as

⁹ Mishara B at al, p. 56.

¹⁰ Mishara B et al, p. 56.

¹¹ Mendelson D, Freckelton I, The Interface of the civil and criminal law of suicide at common law (1194-1845), *International Journal of Law and Psychiatry* 36(2013) 343-349.

¹² Tucker, J, The Geometry of suicide law, *International Journal of Law, Crime and Justice*, 43(2015) 342-365. p.349

¹³ Tucker, J, *The Geometry of suicide law*, p. 362.

¹⁴ Sharma, B.R, Is attempted suicide an offense? *Aggression and Violent Behaviour* 14(2009) 139-145.

¹⁵ R (Pretty) v Director of Public Prosecutions [2002] 1All ER 1., para 35.

honorable.¹⁶ In Buddhism, if actions were rooted in selfless compassion for others, they were not seen as entirely wrong. According to both religions however, suicide could not be an effective means of escape from suffering, as person's karma continues to another life.

Currently, 25 countries have specific laws and punishments for attempted suicide.¹⁷ An additional 20 countries follow Islamic or Sharia law, where suicide attempters may be punished without having a specific law. Penalties range from a small fine or short imprisonment to a lifelong sentence. But the majority of the countries which have the law on the books do not prosecute or punish suicide attempters.¹⁸ In the overwhelming majority of countries, suicide survivors are not punished¹⁹ but are provided with rehabilitation, medical care and emotional assistance to reintegrate with society.

When considering criminalisation of suicide as a public policy measure to decrease suicide rate, decision-makers must ask themselves whether by criminalising suicide and punishing surviving individuals or families of the deceased the desired societal affect is achieved?²⁰ Will prohibition deter people from killing themselves or providing them with health services, mental health counseling and societal support at the moment of crisis will be a better strategy?

Whether suicide is precipitated by mental illness, marital problems, or financial distress, it is a sign of vulnerability and is often a cry for help. A person who attempts suicide needs government assistance and help as much as any other person in need. By putting a person in jail instead of providing them with medical and social services, someone who is already in distress is placed in an even more difficult life situation.

There are many reasons why imposing a threat of punishment for suicide attempt or suicide is a bad public policy. - **First**, imposing punishment for attempted suicide shifts the root cause from social and environmental causes to placing the blame on the victim. **Second**, the threat of punishment deters individuals from seeking help. It reinforces stigma already associated with suicide and suicide attempt and pushes it underground. **Third**, time and resources spent implementing these laws could be put to better use including evidence-based suicide prevention. **Finally**, when suicide is punishable it makes it difficult to collect valid statistical data on suicide since families and survivors are unwilling to report suicide.

Removing liability from attempted suicide, does not mean that the state abrogates its responsibility to prevent suicide. Both civil and common law systems recognise the duty of care that certain state officials (i.e. police,

¹⁶ Wicks E, *The Right to Life and Conflicting Interests*, Oxford and New York: Oxford University Press, 2010, 288.

Vijayakumar L, John S, *Is Hinduism ambivalent about suicide?* *International Journal of Social Psychiatry*, 2018, Vol 64(5) 443-449

¹⁷ Mishara B, Weisstub D, *The legal status of suicide: a Global review*, *International Journal of Law and Psychiatry* 44 (2016) 54-74. p. 56.

¹⁸ Mishara B et al, p. 56.

¹⁹ <https://www.ncbi.nlm.nih.gov/pubmed/12542106>

²⁰ Sharma, B.R, *Is attempted suicide an offense?* *Aggression and Violent Behaviour* 14(2009) 139-145.,

doctors, prison officials) and the state owe to people on its territory. Under national and international law provisions on the right to life, the authorities have an obligation to take appropriate steps to safeguard the lives of people on their jurisdiction, even where death or injury is self-inflicted.²¹

It is important to take a nuanced approach to such sensitive subject as suicide and attempted suicide. In order to understand the root causes of the problem and find effective ways to address it, it is necessary to study suicide incidence and mortality and improve record-keeping and reporting systems. This is impossible to do when suicide is hidden, with survivors and their families ostracised and threatened with punishment.

If the risk of prosecution is removed, patients and their families will be in a better position to openly seek mental health care and other support services after the incident. It is important to realise, that penalising suicide attempts does not deter suicide. Those who are set to take their own lives are unlikely to be deterred by the threat of prosecution. It only exacerbates stigma and prejudice, and increases underreporting. From a societal perspective, removing the risk of prosecution is a more sensitive and humane way of dealing with the problem. Hence, adoption of the Mental Health Care Act is a first big step towards removing the stigma of suicide in India.

Strengthen the existing mentoring and regulation on pesticide sale in the rural and border town, to reduce imprudent pesticide suicide. Implementation of the Mental Health Act towards removing suicide attempts related stigma, this information needs to generate in the grassroots level. Above all, it is important to restrict the availability of lethal - high hazards pesticide's (HHPs) suicide and local community storage facilities means at the larger contexts to address the emerging issues of pesticide suicide in rural India.

²¹United Nations, Human Rights Committee, *115 Session, Draft comment on the right to life* (2015) CCPR/C/GC/R.36/REv.2, para 10, at 3.