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Executive Summary

1. Create awareness on the impact of the Covid-19 pandemic on mental health in Malaysia.
2. Create awareness on the growing rate of the statistics of suicide in Malaysia.
3. Explain the origin of the law criminalising attempted suicide, and countries that have since decriminalised it.
4. Affirm the urgent need for reformation of the law of attempted suicide in Malaysia.

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The Effect of the Pandemic in Malaysia

When the Movement Control Order was first announced in Malaysia, 6 specific restrictions were implemented.¹ Sectors such as grocery stores that sell essentials remained open. As essential workers have to continue working and risk exposure to the virus, regular work tasks incur stress and anxiety.² As front-liners are at the greater risk for exposure to the virus, it is no wonder that they are also at greater risk for poor mental health. A study³ of 1,257 doctors and nurses in China found that half reported depression, 45% anxiety, and 34% insomnia during the peak of their cases.

Stress build-up can contribute to mental health conditions such as anxiety and depression. Social isolation combined with fears and worries we face may also lead to the same results. The combination of an economic downturn and being disconnected from people and institutions can contribute towards feelings of hopelessness and an increase in the risk of suicides.⁴

Since movement restriction began in mid-March, it was revealed that Talian Kasih (Malaysia's welfare hotline) witnessed a 57% spike in calls.⁵ These calls not only reported domestic violence, but financial and marital problems as well. The Women's Aid Organisation reported a 44.4% increase in calls and enquires between February and March.⁶

This is consistent with the data from other countries. In the US, The Disaster Distress Helpline reported a 330% increase in calls between February and when the nationwide lockdown began in March. In April, the number of suicidal callers who were distressed over the pandemic quintupled.⁷ At the end of April, the German fire brigade union told Business Insider that emergency responders were dealing with more suicides and finding suicide notes mentioning fears of being infected- though official figures were not

recorded.⁸ With the rise of suicide rates worldwide, there is an urgent need to reform the laws on suicide.

The Laws of Attempted Suicide-and its Decriminalisation

Section 309 of Malaysia's Penal Code states:

"Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both"⁹

Although the origin of Malaysia's law against suicide was adopted from the British legal system, UK abolished the criminality of suicide under Suicide Act 1961.¹⁰ This act was spearheaded by MP Kenneth Robinson, who tabled a motion contending that suicide should cease to be a criminal offence. The decriminalisation of suicide in the UK reflected the shift in attitudes from viewing suicide as a sin to the medicalisation of suicide and the acknowledgement that most suicides are a result of great psychological distress.¹¹

In 2019, Subang Jaya State assemblywoman Michelle Ng stated that the statistics of suicide rates within Subang Jaya had nearly doubled in comparison to the previous year.¹² She has been a vocal advocate for the decriminalisation of suicide, arguing that *"...the government must come on board with more cogent policies. There are two things that need immediate attention. First, decriminalising attempted suicide as a crime, and setting up a Standard Operating Procedure within the police force to provide help for the attempter...."*¹³

When such a change in the law is considered, lawmakers have to consider the environment it will be implemented in. Factors that should be taken into account includes the sociocultural context, new scientific knowledge and interventions, the needs of patients and families, an ways to bridge the treatment gap.¹⁴ In order to provide adequate mental healthcare services, access to resources and training for professionals (or those working in the mental health field) would have to be considered. This would require a working budget and financial resources to support it. Though awareness has grown in recent times, there is still a need to address the ignorance that still exists in the public's perception of mental health.

In December 2019, Datuk Liew Vui Keong (the former de facto law minister) mentioned that a policy paper was drawn up by the Attorney-General's Chambers to address this matter.¹⁵ The government was also studying and comparing laws for similar offences committed in other countries such as the United Kingdom, Australia, Pakistan and India to examine their approach.¹⁶ 10 stakeholders were involved in the consultation, which includes the Health Ministry, Women, Family and Community Development Ministry, Education Ministry, Befrienders Kuala Lumpur, and the Malaysian Psychiatric Association, among others.¹⁷ He added that Malaysia could see amendments to decriminalise attempted suicide by mid-2020.

In light of our current pandemic and political changes, this update has yet to be discussed. Unfortunately, charges continue to brought against those who try to end their lives. In February 2020, a physically disabled 38-year-old man was arrested for his suicide attempt that followed from his 'erratic behaviour'.¹⁸ Most recently, in June 2020, an unemployed man¹⁹ was imprisoned for a month for attempting suicide. Datuk Liew has since urged for the discussed amendments to be laid before the House of Representatives immediately.²⁰ It was said that the amended framework

would have sufficient statutory mechanism so that mandatory mental health support was extended to such cases. Unfortunately, even though the law was reviewed since early last year, authorities argue that its implementation can only be considered when sufficient mental health supports are in place.¹⁸

Malaysia can look to its neighbouring country Singapore in considering ideas to amend the law. In 2019, Singapore passed a bill repealing their Penal Code's Section 309.²¹ These were the main changes outlined by the Penal Code Review Committee (Table 1):

- Empower the Police and the Singapore Civil Defence Force to intervene immediately to prevent harm and loss of lives from suicide attempts. The Police shall retain their current powers of search and forced entry through a new provision in the Police Force Act.
- Retain the powers of the Police to apprehend persons who attempt suicide and who are reasonably suspected of having a mental disorder, for the purpose of referring them to medical practitioners for assessment. Medical practitioners and the courts are able to compel treatment if necessary.
- Mandatory reporting of attempted suicide no longer applies but the community is encouraged to report cases.
- Retain the powers of the Police to seize evidence in case where a suicide death occurred and a Coroner's Inquiry is launched.²²
- The abetment or assistance of suicide still remains an offence.²³

Table 1. Main Changes Outlined by the Penal Code Review Committee

Objective	Recommendation
a. Police and SCDF officers must be empowered, in situations where the suicidal person may be a danger to himself or others, to immediately intervene to prevent harm or loss of life.	Amend the PFA
b. Police officers must be empowered to arrest and take persons who have attempted suicide to a medical practitioner for assessment, while medical practitioners and the courts should be able to compel treatment if necessary.	Amend s7 of the MHCTA
c. The public should be encouraged to report attempted suicides, although there is no need to impose a mandatory reporting requirement.	No legislative amendments proposed
d. Police officers must be empowered to seize evidence in cases of attempted suicide where harm is caused, as such evidence would be needed if the person subsequently passes away and a Coroner's Inquiry is launched.	Amend the CPC
e. The abetment of attempted suicide must remain a crime. While the person who attempted suicide may not be morally culpable, the abettor who voluntarily facilitates in the ending of a life should. This is in line with the general policy of penal culpability for homicide and the causing of death.	Amend the Penal Code

As mentioned earlier, a policy paper was already drawn up by the Attorney-General's Chambers to address the decriminalisation of suicide in Malaysia. Our recommendations are as follows:

- In considering to adopt a patient-centric approach rather than crime-centric, sufficient psychiatric treatment and rehabilitation resources must be available. The Malaysian Government must develop a suitable rehabilitation framework to manage both adults and minors. For example, Singapore's current practice includes the discretion of the police for referrals. Firstly, police may refer the person to the Samaritans of Singapore or to a next-of-kin to assist in caring for the person. If there are clear signs indicating possible mental instability, the police may then refer the person to the hospital, or the Institute of Mental Health for assessment. If deemed necessary, the person may be warded for care and treatment.²¹
- While the building of mental health resources will take time, public education campaigns to destigmatize suicide and encourage seeking help can be considered immediately. Looking to Canada's suggestions, **Section 2** of the **Federal Framework for Suicide Prevention Act** designates the responsibility in providing guidelines to improve public awareness, disseminating educational information, making existing statistics and related risk factors publicly available, promoting collaboration and knowledge exchange, defining best practices for the prevention of suicide, and promoting the use of research and evidence-based practices for the prevention of suicide.²⁴

Summary

"We welcome the move to differentiate between a criminal act and a cry for help. They need help and counselling, not incarceration and a warder's supervision," former Malaysian Bar president Datuk Abdul Fareed Abdul Gafoor commented.²⁵

The implementation of a more compassionate law to help rather than to punish those who are in psychological distress will be successful only if there is an increase in mental health resources and public awareness. Government and non-government organisations can collaborate on creating safe space for members of the community to seek help without fear of punishment.

As for the Malaysian public, we have to continue doing our part in contributing towards awareness and addressing our internalised perception of mental health. Overcoming the stigma surrounding discussion of mental health will be possible when we take the initiative to keep ourselves educated and informed.

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