

CRIMINAL OFFENCES (AMENDMENT) BILL, 2021

MEMORANDUM

The object of the Bill is to amend the Criminal Offences Act, 1960 (Act 29) to decriminalise attempted suicide and provide for related matters.

The act of nonfatal suicidal attempt or parasuicide together with its social, medical, ethical and legal implications have long presented a complex range of responses and opinions in social theory, law and science. The American Centres for Disease Control and Prevention (CDC) has defined suicide attempt as “a nonfatal, self-directed, potentially injurious behaviour with any intent to die as a result of the behaviour. A suicide attempt may or may not result in injury”. According to Mars, Burrows, Hjelmeland & Gunnell, 2014; Nock & Favazza, 2009, a suicide attempt refers to engagement in a potentially self-destructive behaviour which does not result in death but in which there is at least some intent to die.

Historically and across jurisdictions, there have been varying religious, social and legislative responses to suicide and nonfatal suicide attempts, ranging from demonisation to deification, criminal wrong to legal right. People who committed or attempted suicide in the past incurred the wrath of their religion and presently attract condemnation from their religion.

To begin with, even though the Bible does not outrightly condemn suicide, its abhorrence is based on the Biblical injunction that “thou shall not kill” in both the old and new testaments. From Islamic religious point of view, the Holy Quran and Haddith mirror the Bible’s detestation of suicide. This is seen in the Holy Quran which forbids suicide by stipulating “do not kill or destroy yourself”. According to Judaists, their religion upholds the importance of valuing the gift of life from God and indicate that suicide denies the graciousness of this gift. Additionally, Hindus believe that people who self-murder will not achieve salvation (*Moksha*) and their souls will roam and wander about, haunting and tormenting people. Moreover, considering the fact that God is the sole giver and taker of life, suicide is deemed a mortal sin against God, the creator of the entire universe, which attracts eternal condemnation. It therefore is no surprise that in the past, people who made suicide attempts were excommunicated from the Catholic Church

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In several societies, suicide or attempted suicide is viewed as an inherently immoral and objectionable act that goes against the values, norms and morals of society. It contradicts the natural disposition of human beings to preserve and perpetuate life. It also goes against the just values of self-worth and self-love which underpins the fabric of societal living. In addition, it is considered a selfish act which breaks the tranquil ties of family and society to which everyone owes a certain obligation. As a result, attempted suicide takes the gravity of a scandal where persons who succeed in their suicide attempts are labeled as cowards for checking out on life. Such persons are deemed to bring dishonour to their entire lineage and carry a social stigma.

Even in the event that they fail in their suicide attempts, such social stigma is still attached to them and their families. The social responses that persons who committed suicide received included denial of honourable burial rites and ceremonies; some had their bodies abandoned in evil forests or buried without headstones or markers and their properties were burnt. In Medieval England, suicide victims were denied burial in consecrated grounds and their properties and estates were confiscated by the Crown and Royal authorities. Severe penalties were also imposed on the bodies, for example, the corpses were sometimes carried to a crossroad in the night, (seemingly to confuse the spirit) hung, thrown in a pit or garbage heap and a wooden stake hammered through the body to keep it in place. These social sanctions served as deterrence to persons who had thoughts or plans of attempting suicide.

Following these religious and social trails, lawmakers in the past served punishments to the bodies of the victims as well as the survivors of a suicide attempt. In some cases, the surviving family members were punished as well.

Several penal codes, in the past and present provide for prohibition of attempted suicide. The justification for the criminalisation of attempted suicide is usually grounded in religious and societal perspectives which date back to primitive societies. For instance, it was the church's proscription of suicide in the middle ages that eventually led to its criminalisation in the common law of the United Kingdom.

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It must be intimated that by the mid-18th century, there was a growing sympathy and understanding of suicide in the United Kingdom. In the 1950s and early 1960s, the attitudinal approach to suicide from morally unacceptable sin to the sympathetic recognition of the underlying distress and medicalisation of suicide promoted legislative attention, hence in 1961, the Suicide Act was passed to repeal the penalties for attempted suicide. It is significant to note that New Zealand (1961), Hong Kong (1967) and Canada (1972) have also decriminalised their nonfatal suicide laws. In these countries, instead of imposing punishments for the act as a form of deterrence to the public, several socio-economic measures are established in an attempt to control the rate of suicide. Nevertheless, it is essential to state that most of the jurisdictions that still uphold the criminalisation of attempted suicide are former British colonies or Islamic states that practice the Sharia Law.

As indicated, although the United Kingdom in 1961 repealed the laws penalising attempted suicide, there are still several of its former colonies in which anti-suicide statutes form part of the corpus of laws, despite their achievement of political independence. These countries include, Ghana, Nigeria and Malaysia. In these countries, individuals who engage in nonfatal suicidal behaviour are penalised by their criminal courts.

It is worthy of note that liberalisation and education coupled with progress in understanding the underlying causes of suicide has led to a worldwide change in the stance of its decriminalisation. Furthermore, as a result of the rise in modern medicine and secularisation as well as numerous petitions and entreaties from philosophers, psychologists and activists for social change, some African countries have followed the path of these European states by also decriminalising nonfatal suicide attempt. A typical example is Zambia, where attempted suicide is no longer a crime following a repeal of a prior law that criminalised suicide. There is currently no legal consequence for suicide attempts in Zambia. Another example is Botswana where attempted suicide is not a crime but aiding or abetting the suicide of another person constitutes a criminal offence under Botswana law. These two examples from the African continent are worth emulating by Ghana. This is because there is a general consensus

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to the effect that the issue of attempted suicide is one of a mental disorder which requires medical or psychological attention from doctors and specialists.

By subsection (2) of section 57 of the Criminal Offences Act, 1960 (Act 29) and subsection (4) of section 296 of Criminal and Other Offences (Procedure) Act, 1960 (Act 30), attempted suicide is a misdemeanor, the punishment for which is a term of imprisonment not exceeding three years.

Surprisingly, there is little to no record of the prosecution for attempted suicide in Ghana. Nevertheless, attempted suicide cases are considered particularly newsworthy and have received some media coverage throughout the years. Unfortunately, our legislative framework does not cater for the survivors of attempted suicide aside prosecution. This is a major defect in our legislative framework considering the fact that the underlying cause is considered to be a mental or psychological health issue for which appropriate mental health care service is required.

In recent times, there have been several petitions and requests from individuals including Madam Ewurakua Inkuma Inkum of the University of Ghana, human rights organisations, mental health professionals and concerned citizens alike for the decriminalisation of attempted suicide in Ghana by the repeal of subsection (2) of section 57 of Act 29.

A recent publication by Hjelmeland, Joseph Osafo, Charity S. Akotia and Birthe L. Knizek titled, "The Law Criminalizing Attempted Suicide in Ghana", recorded qualitative interviews from clinical psychologists, emergency ward nurses and police officers on their views on the law criminalising attempted suicide in Ghana. The result of the study showed that about 79% of the participants did not agree with the law criminalising attempted suicide in Ghana. It was agreed that attempted suicide should be treated as a psychological issue, something for which help should be proffered and not to be treated as a crime. It was also agreed that suicide attempters were needy, enigmatic, ignorant and not blameworthy. Similarly, there was emphasis on the obligation of society to investigate the reasons for the actions of suicide attempters in a bid to help them.

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The informants pointed out that the reasons for suicidal behaviour range from physical pain to “extreme emotions” and distress which stretch people to their limits. For these reasons, it was recommended that the individuals are not to be blamed or punished, but should be educated to enable them see the possible or best solutions to their problems and be guided by professionals out of the mental state in which they find themselves. It was agreed that the prioritisation of education on suicidal behaviour may result in a change of the attitudes of Ghanaians on the criminalisation of such behaviour.

It is also argued that in countries where an attempt at suicide is a crime, data about rates of suicide attempts are likely to be highly unreliable. Given that attempted suicide is a criminal offence, there is substantial under-reporting of nonfatal suicide acts and persons who engage in non-medically serious suicide attempts are unlikely to come to the attention of the authorities. At-risk individuals will not receive the requisite psychological counseling, medical care or material assistance necessary to prevent a recurrence of suicide attempts. This hinders the ability of suicidologists to accurately determine suicide risk and protective factors, thereby hampering the proper design and implementation of effective suicide prevention programs. Considering the compelling arguments against the criminalisation of attempted suicide, the Bill is intended to amend the Criminal Offences Act, 1960 (Act 29) to decriminalise attempted suicide and extend the interpretation for “mental disorder” to cover persons with suicidal ideation to enable survivors of attempted suicide to benefit from existing legislative framework established for persons with mental disorders.

Clause 1 seeks to amend subsection (1) of section 57 of the Criminal Offences Act, 1960 (Act 29) to comprehensively provide for abetment of suicide and attempted suicide. The *clause* includes words such as aiding, assisting, facilitating or encouraging another person to commit or attempt suicide whether or not the suicide or attempted suicide is actually committed. By subsection (1) of section 296 of Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the sanction for the offence is imprisonment for life or any lesser term. The purpose of the *clause* is to

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seal any loophole that a culprit may exploit as defense. More significantly, *clause* (1) seeks to repeal subsection (2) of section 57 of the Criminal Offences Act, 1960 (Act 29). The purpose of the repeal is to decriminalise suicide attempts. To wit, survivors of suicide attempts will no longer be at risk of being apprehended, prosecuted and penalised.

Clause 2 is intended as a consequential amendment which seeks to expand the interpretation for “mental disorder” as contained in section 97 of the Mental Health Act, 2012 (Act 846). The purpose is to enable survivors of suicide attempts to have access to mental health care service from the Mental Health Authority established by the Mental Health Act, 2012 (Act 846). The amendment to the interpretation for “mental disorder” would enable a person to make an application to a court under section 42 of the Mental Health Act, 2021 (Act 846) for the involuntary admission of a person believed to be suffering from severe suicidal ideation if the person named in the application is at personal risk or a risk to other people or there is substantial risk that the suicidal ideation will deteriorate seriously. Likewise the various provisions of Act 846 including the rights of persons with mental disorder would apply to a person suffering from suicidal ideation.

HON. KWAME ANYIMADU-ANTWI

*MP for Asante Akim Central and
Chairperson of Constitutional, Legal
and Parliamentary Affairs Committee*

HON. BERNARD AHIAFOR

*MP for Akatsi South and Ranking
Member of Constitutional, Legal and
Parliamentary Affairs Committee*

Date: 17th June, 2021.

Date: 17th June, 2021.

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ARRANGEMENT OF SECTIONS

Section

1. Section 57 of Act 29 amended
2. Consequential amendment

A
BILL
ENTITLED

CRIMINAL OFFENCES (AMENDMENT) ACT, 2021

AN ACT to amend the Criminal Offences Act, 1960 (Act 29) to decriminalise attempted suicide and provide for related matters.

PASSED by Parliament and assented to by the President.

Section 57 of Act 29 amended

1. The Criminal Offences Act, 1960 (Act 29) is amended in section 57 by the

(a) substitution for subsection (1) of

“(1)A person commits a first degree felony if the person intentionally does an act that is capable of aiding, assisting, facilitating or encouraging another person to commit or attempt suicide whether or not the suicide or attempted suicide is actually committed.”; and

(b) repeal of subsection (2).

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Consequential amendment

2. The Mental Health Act, 2012 (Act 846) is amended in section 97 by the substitution for the interpretation for “mental disorder” of
- ““mental disorder” means a condition of the mind in which there is a clinically significant disturbance of mental or behaviour functioning associated with distress or interference of daily life and manifesting as suicidal ideation or disturbance of speech, perception, mood, thought, volition, orientation or other cognitive functions to such a degree as to be considered pathological but excludes social deviance without personal dysfunction;”.