

FILICIDE AND LAW: A COMPARATIVE CRITIQUE

- Christie Merin Manoj & Ashish Singh Taank¹

ABSTRACT

The researcher in this paper tries to analyse an unexplored subject that is filicide. Filicide means killing of children by their own parents. The researcher finds that in India we don't have any laws to protect the brutal murdering of children by parents. It is simply treated as murder under 300 IPC. The researcher also identifies that this area of study is not yet done in India. Understanding the gravity of issue that protectors themselves becoming predators. The researcher tries to identify the core issues of filicide and why it is increasing in India. Also in this paper the Indian scenario is compared with US, UK and Australia where filicide was once high and was tackled by them by various laws and policies. In India the issue of filicide is not well known as the term itself is very infamous. So in this paper the filicide and different kinds of filicide are dealt in a detailed way. The functioning of various child welfare organisations such as Child Line Foundation are discussed in this paper. The researcher also tries to give some recommendations towards the end of this paper.

Keywords: Filicide, India scenario, child line foundation

INTRODUCTION

Filicide, murdering one's own child is the most indecipherable crime in the history of humankind. There are numerous terms which have been used somewhat interchangeably in the description of child murder. *Filicide* means any murder of a child up to the age of 18 years committed by his or her parent(s) or parental figure(s), including guardians and step parents. The difference between *infanticide* and filicide is that infanticide applies to the

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murder of a child under the age of one year by his or her parent(s).² *Neonaticide*, a term coined by Phillip Resnick in 1970, which means a unique circumstance in which a new-born is killed by his or her parent(s) within the first 24 hours of life. Filicide can be committed by both men and women, although far less literature exists on paternal filicide than maternal filicide.

The different kinds of filicide are revenge filicide, mental disorder, superstitious practices, altruistic filicide, unwanted child filicide, suicidal filicide, maternal filicide, economic insecurities are the some of the reasons for this brutal offence. It may happen because of revenge, superstitious practices etc. which will be dealt with in detail in the forthcoming parts of this project. A total of 205,153 children aged 0-14 years were killed worldwide as a result of homicide during a ten-year period of 2008–2017. According to the study conducted by United Nations Office on Drugs and Crime, globally filicide is estimated up to 1 billion children aged 2–17 years and have experienced physical, sexual or emotional violence or neglect in the year 2017. The increase in the rates and statistics of filicide has been alarmingly high which shows the requirement of treating the subject with more importance.

The term filicide may sound vague and simple, but digging deep into the topic, filicide can be looked at from multiple angles such as psychological and sociological perspectives. Filicide is an unexplored area where the studies conducted are very less. Through this project, the author tries to conduct a detailed study of the same. The paper tries to analyse the roots and causes of the crime, and delve deep into the existing laws pertaining to this. The paper also critically compares the mechanisms adopted by other countries and suggests similar methods to be adopted in India for the betterment of the society.

STATEMENT OF THE PROBLEM

At present in India, the cases have been increasing at a booming rate.³ The Madanapalle case and Odisha couple killing two new born babies are some of the glaring examples. A quick glance at the international perspective shows that the rate has been steeply rising day by day. At present filicide is tried under IPC Section 300 i.e., murder. The researcher tries to analyse the available bits and pieces of the subject in this paper. It is to be noted that, the victims of

² Resnick PJ. Murder of the newborn: A psychiatric review of neonaticide. *Am J Psychiatry*. 1970; 126(10):1414–20.

³ News, C. and News, v., 2021. *Madanapalle double murder case: Psychometric findings say sibling killed younger sister* / *Visakhapatnam News - Times of India*. [online] The Times of India. Available at: <https://timesofindia.indiatimes.com/city/visakhapatnam/madanapalle-double-murder-case-psychometric-findings-say-sibling-killed-younger-sister/articleshow/81163610.cms> [Accessed 21 march 2022].

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filicide are children below the age of 18, who are often helpless within the four walls of their homes. This, is the principal point of the concern in this study. Children of such age are minors and under the custody of their parents, guardians or stepparents who cannot stand up for themselves against alligators of their rights. For them, whatever taught by their parents is correct. Thus, the protectors of children themselves turning into their perpetrators shows the gravity of the issue. This issue deserves more attention because children are equal citizens of India and they deserve the same level of enjoyment of rights enshrined under the Constitution of India. The alarming increase in the rate of filicide in India shows the lack of effective mechanism and intervention of child welfare organisations.

OBJECTIVES

1. To conceptualize the crime of filicide and its different types in India.
2. To comparatively analysis the laws of USA and UK.
3. To understand the problems faced by Australia.
4. To understand the functioning and role of NGOs/Child Welfare Organizations dealing with child victims.
5. To propose strategies to be adopted in India to counter filicide.
6. To provide recommendations and suggestions on the issue.

RESEARCH QUESTIONS

1. Whether the crime of filicide be considered as an offence under Section 300 of IPC or be considered as a separate offence under a separate provision?
2. Whether the crime of filicide is unrecognised in the society?
3. Whether the functioning of the child welfare organisations should be revamped?
4. Whether a multi-populous and multi-ethnic country like India should adopt the legal framework and mechanism adopted by countries like USA and UK?

METHODOLOGY

The research methodology adopted by the author is non-doctrinal research. The author chooses to analyse the filicidal crimes in India with regard to its cultural background and

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other sociological factors. The researcher tries to collect data from primary sources like journal articles and existing laws. Additionally, the researcher uses comparative method of study to critically analyse the subject matter in different countries. The author tries to look into the practicality of applying their methods in India. By using all these tools, the researcher aims for the study to be more diverse and to have an insight from different perspectives.

LITERATURE REVIEW

As discussed earlier, the crime of filicide is an emerging trend. Although countless number of cases occur every year, studies conducted as of now are very limited due to the lack of standardized data and difficulty of access.

Definition: Various definitions are applied to the act of filicide, depending on the age of the victim or the perpetrator of the crime (Bourget & Labelle, 1992). C Behera et al,' (2015) included a few definitions of different types of filicides in their study. Homicide-suicide is where a homicide is committed, followed by the suicide of the perpetrator immediately after the homicide. Familicide-suicide can be defined as the killing of one's current or former spouse or one intimate partner and one or more children followed immediately or very soon by suicide by the homicidal offender. When homicide of children occurs in this event, then it may be called filicide-suicide. Maternal filicide is defined as a child's murder by the mother and paternal filicide occurs when a child is murdered by the father.

Nature and Causes: Pritchard (2013) study an attempt at determining the nature and prevalence of child homicides. Brown (2014) study came out with the conclusion that age, gender, and health conditions of a child are also risk factors that need to be accounted for while evaluating the crime. Thea Brown et al.' (2019) uncovers three main causes of the crime; male violence in societies; familial socioeconomic conditions; and the prevalence and devastating impact of mental illness. The book further focuses on family issues and their background in causing filicide. Additionally, the study also concluded that factors like culture, domestic violence, mental illness, parental separation, substance abuse, and victim-perpetrator relationships plays significant role in understanding the causes of the crime. Danielle Tyson and Paula Fernandez Arias (2021) came up with some associated risk factors such as mental illness (especially depression), separation, domestic violence and substance abuse. Any client/patient with mental illness and partner separation should be probed for thoughts of harm, the study concluded.

Types: Various scholars upon thorough examination and based on factors to motivate the murder, have classified filicide into five different types, (a) altruistic, a murder committed out of love; (b) psychotic, when no apparent motive is present (c) unwanted child, which is self-explanatory; (d) accidental, when there was no intent to kill; and (e) spousal revenge, when the homicide is committed with the intent to make the spouse suffer (P. J. Resnick, 1969, 1970).

Filicide-Suicide: C Behera et al,' (2015) defined filicide-suicide as a special category of homicide-suicide event where the victim(s) are children and the perpetrator is one of the parents or both. In a study by Hatters Friedman et al.' (2005), parental motives for filicide-suicide included altruistic and acutely psychotic motives. The study also indicated that the parents frequently showed evidence of depression or psychosis and had had prior mental healthcare. Susan et al., (2005) wrote an article concluded that motives for filicide-suicide would most likely be altruistic or acutely psychotic, because parents who had fatally abused a child, had an unwanted child, or sought revenge on a spouse would be less likely to kill themselves after having killed their children.

Paternal Filicide: Most recently Dawson (2018) concluded that at least half of all filicides are committed by fathers. Marieke Liem¹ and Frans Koenraadt (2018) concluded a study that corresponds to other countries and concluded that 25% of fathers had killed in reaction to threatened separation or divorce, and that over a third of men and more than half of the women were mentally ill at the time. The study added a point denoting the increasing cases of paternal filicide over maternal filicide in the recent years.

Maternal Filicide: Abigail Wong (2017) concluded that maternal filicide due to mental illness or postpartum depression is rare. This is because there are five different types of filicides as discussed above, and mental illness plays a significant role in only one type i.e., purposeful killings. Therefore, maternal mental illness does not occur in the majority of filicide cases. C Behera et al,' (2015) study concluded that depression, psychosis, psychosocial stressors of marital discord and lack of support to be reasons.

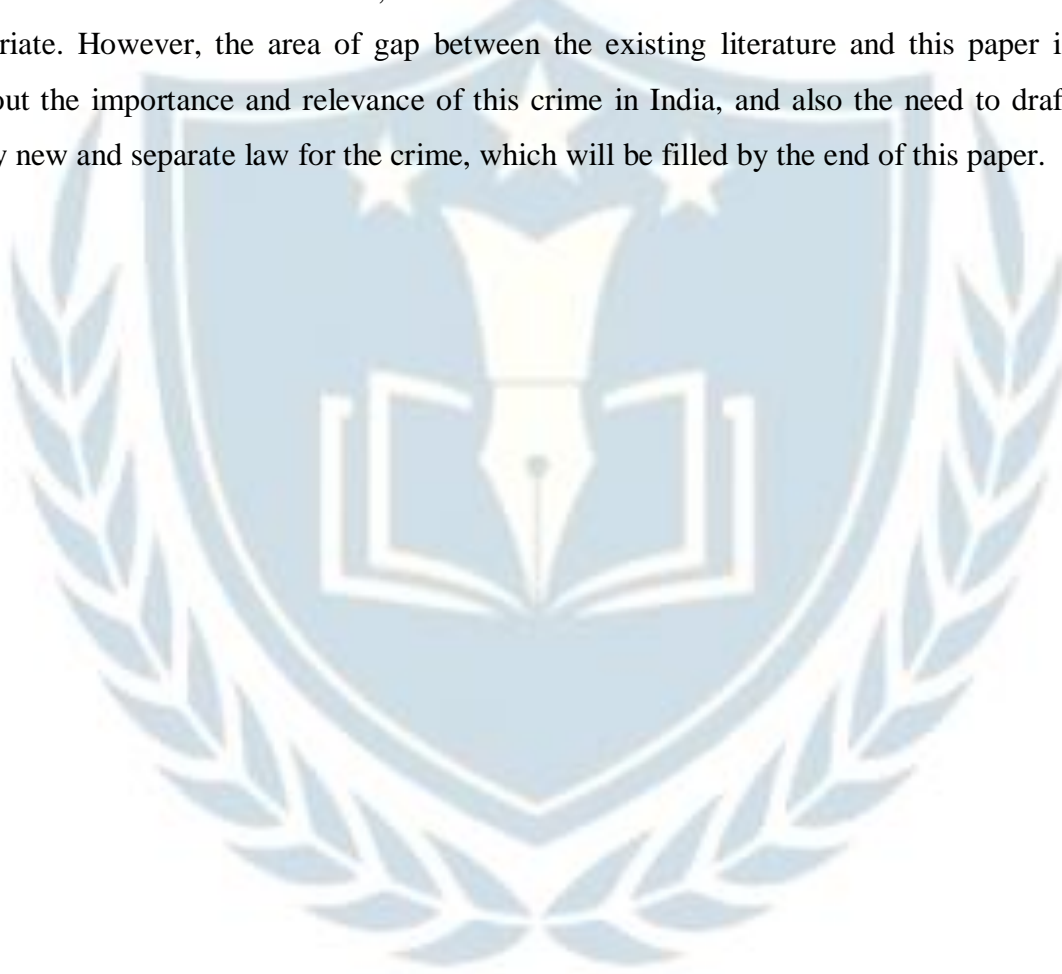
Fiduciary Relationship: The care of children is the single most important task a parent has, making the breach of this duty a virtually incomprehensible event. Claudia M. Klier (2020) study stated that parents are bound to protect their children not simply by virtue of evolutionary biology but also by the considerable array of social mores that govern notions of appropriate parenting.

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Prevention: Mark T. Palermo (2003) concluded that filicide can be prevented in families with autistic children through exhaustive illness education. Marieke Liem¹ and Frans Koenraadt (2018) stated that in cases where filicide occurs due to mental illness, increased monitoring by primary care physicians might have preventive value. Abigail Wong (2017) concluded that in maternal filicides that happen due to postpartum depression, the government should support and fund efforts to provide preventative care.

The scope of this existing literature review is limited to nature, reasons and evaluating parameters for filicide and therefore, will not be discussed in detail but will be referred to as appropriate. However, the area of gap between the existing literature and this paper is to bring out the importance and relevance of this crime in India, and also the need to draft an entirely new and separate law for the crime, which will be filled by the end of this paper.



FILICIDE: AN INEXPLICABLE CRIME

Every parent is obligated to safeguard their offspring and this is not something one can skip. Care for one's children is the most crucial and essential responsibility a parent has. The failure to fulfil this responsibility is a serious tragedy. The fact that filicide research has remained a relatively small topic may be attributed to the incomprehensibility of the reasoning process. Because of the absence of standardised data and the difficulty of accessing it, only a few studies have been conducted to effectively evaluate the incidence of filicide deaths. When looked at India alone, such data is almost nil.

Filicide is a phrase that encompasses or accommodates both infanticide and neonaticide. The Oxford Dictionary defines filicide as 'a person who murders their son or daughter.' The roots of the term derives from the Latin words 'Filius' for son, 'Filia' for daughter, and 'Cide' for "a person or object that kills, or an act of murdering." The fact that filicide is committed by the child's parent is critical because it should not be confused with children murdered by non-parental figures.

Filicide might appear to have a straightforward definition. However, a close examination of the term reveals that there are numerous hidden intricacies. On reviewing the existing literature on definition of filicide, there is considerable disagreement by authors as they tend to develop their own. For instance, the age limit keeps varying according to the research studies conducted. It is, therefore, difficult to ascertain an end age because even when a kid becomes

an adult in society's view, they remain the parent's son or daughter. Even though the upper age limit is difficult to understand, the lower age limit can be fixed. This is because, if a kid dies within 24 hours of birth, it is neonaticide and if a kid dies within 12 months, it is infanticide. This begs the question as to why age limit is important and the answer lies in the fact that, keeping an age limit will help research studies narrow their samples.

Another difficulty arises while determining as to whether who comes under the term parents; biological or non-biological parents? Or does it include step parents and guardians as well? Can a surrogate mother be considered under the ambit of definition of filicide? The Oxford Dictionary defines parent as a person's father or mother. However, the author is of the opinion that a parent should include any person who is the legal guardian of the child and who assumes the position of a parent. Parental responsibility carries with it certain expectations, and if a stepparent successfully applies to the courts and obtains it, they should

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also be legally accountable for protecting, providing for, disciplining, educating, and approving medical treatment for the child. Therefore, even a step parent or any guardian who assumes the power of parent comes under the definition of filicide.

CLASSIFICATIONS OF FILICIDE AND REASONS:

To kill one's own creation is not a normal thing, considering the biological and emotional connection a kid has with his/her parent. This is why filicide should be distinguished from other forms of child murder. To understand ways to cure the problem, it is essential to understand the reasons and root causes of the crime. Throughout the years, researchers and various scholars have come up with five factors that would aid in comprehending why a parent would choose to murder their child. The following classifications were made by Resnick:

Altruistic filicide: This occurs when a parent commits filicide in the belief that it is in the child's best interests. Altruistic filicide basically consists of two components. The first is filicide-suicide, in which the parent could not abandon their children when they committed suicide. For example, a mother who has suicidal tendencies may not be willing to leave her child motherless in a cruel world and therefore, commits murder. The second component is parenticide, which means that the parent kills their child to alleviate their suffering, whether actual or imagined. Either way both aspects are murders that appear to have been done in the name of love. In such cases, the parent genuinely believes that the world is too harsh for the child to live in, and this is taken as defence in many cases. A 26-year-old woman and a 13-month-old baby were found hanging in their house because she was harassed for additional dowry by her in-laws. She died by suicide after killing her daughter.⁴ This case is a prime example of altruistic filicide because the parent's suicidal tendencies coupled with the belief that leaving her daughter in this world would be cruel made her take the extreme step.

Acutely psychotic filicide: This is defined as an act in which a parent murders their child irrationally during a psychotic episode. The parents kill while under the influence of hallucinations, epilepsy, madness, delirium, and ictal phenomenon. In this type of filicide, there is no comprehensible or discernible motive behind the murder. New mothers who experience postpartum depression are also potential child murderers. Postpartum depression

⁴India Today, 2021, Mother Hangs herself and her baby,
<https://www.indiatoday.in/cities/hyderabad/story/mother-hangs-self-baby-in-hyderabad-family-alleges-murder-over-dowry-1914581-2022-02-18> (Accessed on 31 March 2022)

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(PPD) is defined as a complex series of physical, emotional, and behavioural changes that happen in some women after giving birth. Several surveys reveal that most of mothers experiencing postpartum psychosis admitted to having filicidal thoughts. The mother of a 27-day-old baby boy was arrested for killing him by banging his head against the wall, police said. The premature baby was regularly ill and his incessant crying prompted the mother to commit the crime.⁵ It is very common for new mothers with postpartum psychosis to experience thoughts of harming or even murdering their own child.

Unwanted child filicide: This type of filicide occurs when a child is disposed of due to its presence posing a burden on the parent. Parents who benefit in some way by the child's death are included in this category. Most of the times the reason behind such kind of filicide would either be financial crisis, or children born with disabilities. Some other cases are when the parent murders their child due to extra-marital relationships. The child born within marital ties would be burden to his/her extra-marital relationship, and therefore would proceed to murder the child.

Accidental filicide: These cases are often the outcome of battered child syndrome and are classified as accidental because homicidal intent is absent. Such type of filicide may occur as a result of child abuse, neglect, or Munchausen Syndrome by Proxy. Munchausen Syndrome by Proxy is defined as a rare kind of child abuse in which someone caring for a child, typically the child's biological mother, fabricates or purposefully induces signs of illness in the kid. This type of manufactured or induced illness focuses attention on the sufferer rather than the abuser. A 17-year-old girl from Uttar Pradesh was killed by her grandfather and uncles over wearing jeans in the village. She was warned by her grandfather and uncle when they saw her in jeans but when wore it again, she was brutally beaten up by them. Finding her in a critical condition, the duo rushed her to hospital but she collapsed on the way.⁶ This is a typical case of accidental filicide because her death was never intended. The death was a result of brutal abuse and battery, which was entirely accidental. Another case happened in Mainpuri, Uttar Pradesh wherein a 9 year old was strangled by his inebriated father after he failed to locate the latter's mobile phone. He was a habitual abuser and a chronic alcoholic. In this case too, the death of the child was not intended and it was a result of abuse.

⁵Indian Express, 2021, Mother Arrested for killing 27 day old baby, <https://indianexpress.com/article/india/mother-arrested-for-killing-27-day-old-baby-in-kerala-police-7671849/> (Accessed on 3 April 2022)

⁶India Today, 2021, Relatives kill 17 year old for wearing jeans, <https://www.indiatoday.in/india/story/relatives-kill-17-year-old-up-girl-over-wearing-jeans-try-to-throw-body-from-bridge-2-arrested-1831327-2021-07-22> (Accessed on 5 April 2022)

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Spouse Revenge filicide: This is when a parent murders the child in an attempt to inflict pain on the other biological parent. A 20 year old man was arrested for allegedly kidnapping and killing his girlfriend's seven-month-old sister because he wanted to take revenge from his girlfriend's mother, who was opposing their wedding.⁷ He killed the baby by smothering her and dumped her body in a drain near the area. This case cannot entirely be considered spouse revenge filicide because they were not a couple. However, there was another case that happened in Kerala, wherein the lover of a woman killed her granddaughter in a hotel by drowning her. The grandmother (Sipsy) and her lover (John D'Cruz) were having an affair which she decided to discontinue. Apparently, this became a motive for her lover to kill her one and a half year old granddaughter for revenge.⁸

Sometimes, a case can be a combination of two types of filicides. For instance, the Madanappalle double murder case, wherein a couple murdered their two unmarried daughters by using dumbbells. Dumbbells were treated as Lord Shiva's *damruks* and the parents believed that way their children would return to life in a purer form with the end of evil forces surrounding them. The parents were arrested and sent to a government hospital for medical treatment. This case can be taken as an example of altruistic filicide because the parents genuinely believed that killing their children was good for them. This case is also an example of acutely psychotic filicide because the authorities confirmed that they weren't mentally stable.

LAWS OF USA, UK AND AUSTRALIA

One of the objectives of this research project is to identify, understand and analyse the laws of different countries and to check their applicability in India. This takes us back to the question whether such laws can be adopted in India, or whether we need a separate legislation for this crime. To answer this, it is imperative to understand the functioning of child protection schemes and key legislations of other countries. For this study, the author will be examining laws and schemes of USA, UK and AUSTRALIA.

UNITED KINGDOM

⁷ Hindustan Times, 20 year old man kills seven month old for revenge, <https://www.hindustantimes.com/cities/mumbai-news/20yearold-man-arrested-for-smothering-seven-month-old-out-of-revenge-101648390430055.html> (Accessed on 7 April 2022)

⁸ Mathrubhumi, Infant got killed by father in kerala, <https://english.mathrubhumi.com/news/kerala/kerala-infant-drowning-case-child-s-father-held-grandmother-in-custody-1.7339903> (Accessed on 7 April 2022)

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In the United Kingdom, there are currently the following three principal acts that pertain to child murder and filicide. They are; the Infanticide Acts of 1922 and 1938, the Children Acts of 1989 and 2004, and the Care Act of 2014. Along with these Acts, they have numerous other Child Welfare Programs to protect children from domestic crimes.

INFANTICIDE ACTS OF 1922 AND 1938

It was in the 16th and 17th centuries, a drastic change in the opinion on child murder occurred in Europe. France and the United Kingdom established laws that made filicide a crime punishable by a death penalty. Both the countries also presumed that the mother who was on trial for the crime was guilty until proven innocent. This meant that she was responsible for proving to the court that her child was not the victim of murder. This changed with the establishment of the Infanticide Acts of 1922 and 1938. These laws recognized that birthing and caring for an infant can affect a mother's mental health for up to 12 months after the event. This concept was discussed earlier known as the Postpartum Depression. Thereafter, these acts abolished death penalty as punishment for maternal infanticide, making the punishment similar to that of manslaughter. Several other Western countries also adopted similar laws.⁹ As of now, the maximum penalty for infanticide is life imprisonment. However, in practice a non-custodial sentence is usually the outcome. This non-custodial sentence will however, often be subject to a treatment or a hospital order.¹⁰

CHILDREN ACTS OF 1989 AND 2004

This key piece of legislation as it stands today, was developed over many years as a result of an increase in allegations about abuse and neglect in the United Kingdom. The act provides a framework for protecting and safeguarding children. Central to it is the concept that all children have the right to live a life free from abuse and harm. Those who have a responsibility for a child's care and welfare have a duty to protect them. A key part of the Act is "orders". These are rulings made by the courts on specific issues. For example, a 'care order' is imposed by the courts and places a child under the care of a local council. The local council then shares parental responsibility for the child with the parents. Sharing parental responsibility means making most of the important decisions about the child's upbringing (such as where they live and how they are educated). One important feature is that these

⁹NCBI, An Article on maternal Infanticide <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2922347/> (Accessed on 31 March 2022)

¹⁰InBrief, Infanticide laws in UK, <https://www.inbrief.co.uk/court-proceedings/infanticide-and-criminal-law/> (Accessed on 21 March 2022)

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orders do not remove the child from home. Instead they provide additional supervision of the child by the local authority. The term “well-being” in the Act refers five outcomes, the child is:

- Is healthy
- Safe
- Able to enjoy and achieve
- Can make a positive contribution
- Has economic well-being

CHILDREN AND SOCIAL WORK ACT 2017

Both the acts of 1989 and 2004 were amended by the Children and Social Work Act 2017. Important provisions of the Act:

- Section 3: Local authorities must appoint personal advisers for care leavers up to 25 years.
- Sections 12 – 15: The Child Safeguarding Practice Review Panel was established to review and report on serious and complex child protection cases.
- Section 17: Reports on local safeguarding practice reviews will be published.
- Section 24: This section suggests that child death review partners are required to review each death of a child normally resident in their area and identify matters that are relevant to public health and safety and children locally.
- Section 34: Relationships education will be provided to primary school children and relationships and sex education will be provided in secondary schools.
- Section 36: Social Work England is a regulatory body for the social work profession.

CARE ACT OF 2014

This act is intended to support councils, their partners and local authorities to develop outcome focus person-centred safeguarding practice. Under the Care Act 2014, local authorities and childcare providers must:

- Conduct an assessment of anyone who might be needing care and support. This applies even if they aren't eligible for state-funded care.
- Involve anyone responsible or related to the person needing care in the assessment.

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- Provide preventive services and community support to meet the desired outcomes.

UNITED STATES OF AMERICA

SAFE HAVEN LAWS

Reports of new born infants abandoned in unsafe locations, such as public restrooms or trash receptacles are increasing at a staggering rate. In response to this, in 1999, many State legislatures of the USA beginning in Texas, enacted this legislation to address infant abandonment and endangerment. “Baby Moses laws” or infant safe haven laws were enacted for mothers to safely relinquish their babies to designated locations. Thereafter, the babies are protected and provided with medical care until a permanent home is found. Safe haven laws generally allow the parent to remain anonymous. They also get to be shielded from criminal liability or prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven. Safe haven laws can be invoked by any agent of the parent as well. Either parent may surrender his/her baby to a safe haven.

Until now, all the 50 States of the country have enacted safe haven legislation. The prime focus of these laws is on protecting new-borns from endangerment by providing parents with an alternative to criminal abandonment. The laws, therefore, are limited to very young children. The purpose of safe haven laws is to ensure that relinquished children are left with authorities who can provide the immediate care needed for their safety and well-being. Another interesting fact about this law is the new-born safety device. A new-born safety device also called new-born safety incubator or a baby box, is a medical device used to maintain an optimal environment for the care of a new-born infant. This law allows a parent to voluntarily deliver the infant to such a box. Safe haven laws will be discussed in detail in the forthcoming sections.

CHILD ABUSE PREVENTION AND TREATMENT ACT (CAPTA).

Much like the Protection of Children against Sexual Offences Act, 2012, in India, the key Federal legislation addressing child abuse and neglect in the USA is the Child Abuse Prevention and Treatment Act (CAPTA). CAPTA provides Federal funding and guidance to States in support of prevention, assessment, investigation, prosecution, and treatment activities. It also provides grants to public agencies and non-profit organizations, including Indian Tribes and Tribal organizations, for demonstration programs and projects. CAPTA additionally supports research, evaluation, technical assistance, and data collection activities.

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It establishes the Office on Child Abuse and Neglect which is a national clearinghouse of information related to child abuse and neglect. CAPTA also provides for a proper and precise definition of child abuse and neglect.

FAMILY FIRST PREVENTION SERVICES ACT

This act came into existence on February 9, 2018. Commonly known as the Family First Act, it aims to help keep children safely with their families and avoid the traumatic experience of entering foster care. Researches recognized and identified that too many children (nearly half a million) are unnecessarily separated from parents who could provide safe and loving care if given access to needed mental health services, substance abuse treatment or improved parenting skills. Family First Act provides struggling and overburdened child welfare agencies with the tools to help children and families in crisis, including families struggling with the opioid and other drug epidemic. The following are the key features of the legislation:

- **Preventions services:** By prevention, it means early intervention services to keep children safe, strengthen families and reduce the need for foster care whenever it is safe to do so by making use of federal resources.
- **Support for kinship caregivers:** Provides federal funds for Kinship Navigator programs that link relative caregivers to a whole lot of services and supports to help children remain safely with them.
- **Establishes requirements for placement in residential treatment programs and improves quality and oversight of services:** Children with emotional and behavioural disturbance requires special treatment. The act allows federal reimbursement for care in certain residential treatment programs for such children.
- **Improved services to older youth:** Allows states to offer services to youth who have aged out of foster care up to 23 years. Along with this there is an added flexibility of admission to the Education & Training Voucher (ETV) program.

AUSTRALIA

Australia has been depicted as a nation with a high incidence of filicide – one child under 18 is killed by a parent every fortnight; the deaths form 20-25% of all domestic homicides. Studies have suggested that deaths are associated with a complex constellation of intersecting factors including intimate partner violence, mental health, drug and alcohol problems, social

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isolation and parental separation. However, a difficulty poses because Australia does not publish regular data on the incidence and circumstances of such deaths. Therefore, it becomes difficult to know if this is an accurate representation of the problem. Despite the high number of cases, they fail to acknowledge the problem let alone find solutions. Experts say that their citizens are extremely well-defended against recognising such type of deaths; they don't really want to know about them. Australia has been chosen for the purpose of this study because as mentioned earlier, it has one of the highest rates of filicide crimes, yet conveniently chooses to ignore the issue in total. The focus of the author in this section will be on identifying the problems the country faces and to understand the downside if we continue to ignore the issue in our country.

PROBLEMS:

Researchers and experts suggested that one problem is there are no specific support services or helplines for people who are feeling as if they might harm their children. For example, they have phone lines for depression, but there's nowhere for the people to ring and say, 'I'm feeling very depressed and I think I'm going to kill my children'. However, the solution put forth by this research scholar would not be fruitful if we implement it in our country. The reason being that no parent would openly want to admit their filicidal thoughts through a helpline number considering the immense amount of social stigma and embarrassment.

Another problem is that the situations in which children are killed vary because there is no single pattern or a specific type of perpetrator. Therefore, this complexity serves to make it harder for everybody including the government and society at large to understand and focus on this issue. The same complexity happens to be in our country as well. There is no specific manner of straightjacket definition as yet. This alongside the wide range of cases occurring in India certainly makes things complicated to understand.

The current weakest point in Australia's family violence intervention is the response to post-separation violence and specifically developing an alignment between concerns for the harm to children. This has been identified through child protection, family support services, the specialist family violence sector and decisions made in the Family Law arena.

CHILD PROTECTION: RIGHTS AND REALITY IN INDIA

BACKGROUND

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It was established in India in March 2007 under the Commission for the Protection of Child Rights Act, 2005, an Act of Parliament, and is known as the National Commission for the Protection of Child Rights (NCPCR) (December 2005). The Commission's mandate is to ensure that all laws, policies, programmes, and administrative mechanisms are consistent with the Child Rights perspective as enshrined in the Indian Constitution as well as the United Nations Convention on the Rights of the Child (UN Convention on the Rights of the Child). A child is described as a person who falls within the age range of 0 to 18 years¹¹.

When it comes to national policies and programmes, the Commission envisions a rights-based approach that is integrated into them, as well as nuanced responses at the state, district, and block levels that take into account the unique characteristics and capabilities of each region. The organisation strives for a deeper penetration into communities and households in order to reach every kid. It also hopes for greater consideration of the ground experiences gained on the ground by all authorities at the highest level. As a result, the Commission believes that the state plays an essential role, that effective institution-building processes are followed, that decentralisation at the local and community level is respected, and that a broader societal concern for children and their well-being exists.

OFFICIAL LEGAL PROTECTION

Because the Ministry of Women and Child Development believes that less ambiguous and more stringent legal provisions will allow it to more effectively address the heinous crimes of child sexual abuse and sexual exploitation, the Protection of Children from Sexual Offences (POCSO) Act, 2012, was championed by the Ministry of Women and Child Development.

The POCSO Act, 2012, establishes a system for monitoring the execution of its requirements. In order to keep track of the designation of Special Courts by state governments, it is the responsibility of state governments to monitor the appointment of public prosecutors; To supervise the development by state governments of the guidelines described in section 39 of the Act, and to supervise the application of these guidelines¹²; To supervise the development and implementation of modules for training police officers and other interested individuals, in order for them to perform their duties in accordance with the Act.

CHILD MARRIAGE AND CHILD ABORTION

¹¹ United Nations, 2003, "Article 16"

¹²United Nations, "Treaty Collection"

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Aside from poverty, the majority of a child's poor circumstances are also a result of a variety of socio-cultural practises exhibited by a community or a cultural group as a whole. Child marriage is one of those societal ills that refuses to die and continues to rear its head even when there is a widespread social boycott and legal prohibition on it. It is often referred to as CEDAW, or the Convention on the Elimination of All Forms of Discrimination against Women, and it is an international treaty aimed at eliminating discrimination against women. Marriage and family life are outlined in Article 16¹³, which declares that all women, as well as men, have the right to choose their spouse, to share the same obligations, and to pick how many children they want to have and how far apart they want them to be. In accordance with this agreement (CEDAW), child marriage should not be recognised as having legal consequences, all measures must be made to enforce a minimum age, and all marriages must be recorded in a government-sponsored registry. India signed the agreement on July 30, 1980, but made the declaration that, due to the size and population of the country, it would be impractical to implement a system of marriage registration.

Indian law defines child marriage as a union in which either the woman or the man is under the age of 18, or both are under the age of 21, respectively. The majority of child marriages involve teenage women, many of whom are from low socioeconomic backgrounds. In India, child marriages are extremely common. Females who marry younger in life are less likely to be educated about reproductive concerns, and as a result, pregnancy-related deaths are known to be the primary cause of death among married girls between the ages of 15 and 19 years old. Girls between the ages of 20 and 24 are twice as likely as girls between the ages of 20 and 24 to die during childbirth. Girls under the age of 15 are five times more likely than older girls to die after childbirth. Infants born to moms under the age of 18 are 60 percent more likely than infants born to mothers over the age of 19 to die during their first year of life. It is more likely that the children would survive, but they will suffer from low birth weight, starvation, as well as delayed physical and cognitive development¹⁴.

When compared to older women, young girls who are married as children are more likely to endure domestic abuse in their marriages. According to a study conducted in India by the International Centre for Research on Women, girls who are married before the age of 18 are twice as likely as other girls to be beaten, slapped, or threatened by their husbands, and they

¹³ United States Agency for International Development, 2007, "New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs," pg. 9

¹⁴ The Prohibition of Child Marriage Act of 2006.

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are three times more likely to be sexually abused by their husbands. Young brides frequently exhibit signs and symptoms of sexual abuse as well as post-traumatic stress disorder.

LABOUR AND POVERTY AMONG CHILDREN

Child labour is defined as the practise of engaging children in economic activity, whether on a part-time or full-time basis. These practises deny children the opportunity to experience childhood, as well as harming their physical and mental development. Poverty, a lack of adequate educational opportunities, and the expansion of the informal sector are all believed to be major contributors to child labour in India. Child labour is prohibited under Article 24 of India's constitution. The Indian Penal Code, as well as several laws and statutes, such as the Juvenile Justice (Care and Protection of Children) Act-2000 and the Child Labour (Prohibition and Abolition) Act-1986, serve as a legal framework for identifying, prosecuting, and ending child labour in India.¹⁵ Around the course of human history, extensive child labour has been fostered by macroeconomic factors all over the world¹⁶. They asserted that both the demand for and the supply of child labour are factors in the development of child labour. Work has transferred from the organised, official sector to the unorganised, informal sector as a result of India's complex labour laws¹⁷. Therefore, after the unorganised farm sector, which employs 60 percent of child labour, the unorganised trade sector, as well as the unorganised assembly sector and the unorganised retail sector, are the top employers of child labour in the world. Even in situations where children are attending school, children engage in routine after-school home-based manufacturing and economic activity, according to the authors.

CHILD ABUSE AND CHILDREN IN PROSTITUTION ACTIVITIES

It is the physical, sexual, emotional, or psychological maltreatment or neglect of a child or children that constitutes abuse. The Ministry of Women and Child Development of the Government of India conducted a study on child abuse with the assistance of UNICEF, Save the Children, and a Delhi-based non-governmental organisation (NGO) called PRAYAS. With the study, the researchers hoped to gain a more reliable and thorough understanding of the issue of child abuse, with the goal of assisting in the creation of suitable laws and programmes in the future. The National Study on Child Abuse is one of the largest empirical

¹⁵ Open Government Data Platform India, data.gov.in, (Accessed on 2 January 2022).

¹⁶ Labour and Employment Statistics Ministry of Statistics and Programme Implementation, Govt of India (Accessed on 31 January 2022)

¹⁷ International Center for Research on Women, "Child Marriage Facts and Figures", 2019

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in-country studies of its kind in the world, and it is the largest study of its kind in the United States. This report also serves as a companion to the United Nations Secretary-General's Study on Violence against Children, which was published in 2006.

The findings of the study revealed startling statistics about the scope and magnitude of various forms of child abuse – an area that had previously gone unnoticed. In addition, the survey has uncovered information on differences between different age groups, differences between men and women, differences between states, and differences within evidence groupings. The findings will aid in the improvement of understanding among all stakeholders, including families, communities, civil society groups, and the government as a whole.

POCSO – WHY A SEPARATE LAW?

The Parliament of India passed the Protection of Children against Sexual Offences Bill (POCSO), 2011 regarding child sexual abuse on 22th May 2012 making it an Act. Before the enactment of this Act, there were provisions within IPC that dealt with sexual offences. However, a question becomes pertinent as to why a separate Act was considered despite the presence of laws in IPC. Before the 2012 Act, Goa Children's Act, 2003, was the only specific piece of child abuse legislation. Child sexual abuse was prosecuted and subsumed under the following sections of Indian Penal Code: IPC s.375 – Rape; IPC s.354 – Outraging the modesty of a woman; IPC s.377 – Unnatural offences. However, trying child sexual abuse crimes under these sections posed the following loopholes:

- IPC s.375 doesn't protect male victims.
- IPC s.375 does not extend its protection to anyone from sexual acts of penetration other than peno – vaginal intercourse.
- IPC s.354 lacks a statutory definition of the word modesty and does not protect modesty of a male child. It carries a weak penalty and is also a compoundable offence.
- IPC s.377 does not have a proper definition of the term unnatural offences. It only applies to victims penetrated by their attacker's sex act, and is designed in such a way that it cannot criminalise sexual abuse of children.

This takes us back to the question; why was POCSO enacted as a separate law for children even when we had laws in IPC with regard to sexual offences? The answer to this question

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might help us prove why we need a separate legislation for filicide. In this section, the author tries to analyse why POCSO was enacted as a separate legislation to protect children from sexual offences.

Definition of child: The Act defines a child as a person under the age of 18 years.

Compulsory Registration of Complaint for Minor Girls Seeking Abortion: The Act states that in case any minor girl is seeking abortion, the service provider should mandatorily register a complaint of sexual assault with the police. However, under the Medical Termination of Pregnancy Act, 1971, it is not mandatory to report the identity of the person seeking an abortion.

Failing to report child sexual abuse is an offence: The Act mandates that every crime of child sexual abuse should be reported. If a person despite having knowledge or information of abuse and fails to report it, they may face imprisonment up to six months or fine or both.

Legal Aid: Section 40 of the Act allows victims to access legal aid.

Criminalisation of consensual relationships: The law presumes that all sexual acts with children under the age of 18 is a sexual offence, and therefore, includes consensual sexual acts where both the individuals are under the age of 18. This means that two adolescents who engage in consensual sexual act will also be punished under this law.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

The Juvenile Justice (Care and Protection of Children) Act 2015¹⁸ was enacted by the Indian Parliament amid heated debates, lengthy debates, and street protests by child rights groups and certain members of Parliament. This legislative note summarises the circumstances and processes that resulted in the passage of this Act. It discusses the Act's positive provisions, such as changes to nomenclature to remove negative connotations, the addition of several new definitions such as orphaned, abandoned, and surrendered children, the establishment of timelines for Juvenile Justice Board inquiries, streamlining adoption procedures, the addition of new child abuse offences, and mandatory registration of Child Care Institutions. It examines the contentious provision that allows for the "transfer" of children between the ages of 16 and 18 accused of "heinous crimes" to the adult criminal justice system. It makes recommendations for legislative reform and improved law enforcement.

¹⁸ Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India amidst intense controversy, debate and protest on many of its provisions by Child Rights fraternity.

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For more than a century, states have been adamant about using the juvenile justice system as a weapon to protect the public by establishing a method for responding to criminal acts committed by youngsters transitioning to adulthood. States acknowledge that adolescents who commit crimes are distinct from adults: they are less accountable as a group and possess a greater possibility for reform. To address these distinctions, states have built a separate court system for juveniles and a separate youth-focused service delivery system for adults. It has been observed that countries in economic transition have seen a considerable increase in delinquency rates. Unless there are rare exceptions, the majority of children and young people who come into dispute with the law have committed minor offences.

ANALYSIS

New laws are made when a disaster or wrong happens. Laws must foresee the happening of the wrongs in the society. It must be dynamic to the situation. Filicide is one such issue. The cases in India are increasing to an extent day by day. Parents are supposed to be the protectors or guardians of children. It is unfortunate that they themselves become the murderers of their children. The researcher has compared the situation with different countries such as USA, UK and Australia. These countries were taken based on the fact that they have an increasing number of filicide cases. On considering the methods and legislations they adopt, the researcher concluded that they have laws for the protection of children of different age group. Numerous legislations were setup to address the issue. They considered children's impudence and freedom.

ENACTMENT OF NEW LEGISLATION

In India, we only have laws against infanticide i.e., murdering children below the age of one year. We have also have legislations against abortion and child sexual offences. However, there aren't any laws established for the protection of children falling between the age group of 2-18 years. A child murdered by his/her own parents and/or guardians, is treated as mere murder case. We understood the gravity of sexual offence against the children and therefore, we enacted special laws for the protecting them. Therefore, considering the importance and gravity of filicide it is necessary to enact a new legislation. Who should the children approach if their protectors themselves turn out to be their predators? They are left helpless having no clue as to where they would get help from. Parents murdering their own children is violation of right to equality and right to life enshrined under the Constitution of India. A child equally enjoys rights as any other normal ordinary citizen of the country. Article 15 (2) of the

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constitution enumerates that nothing shall prevent the state from making laws for the protection of women and children. Child protection is not only limited protecting them from child labour, marriage or sexual offence, but also includes the protection of their lives.

SETTING UP A NEW AGENCY

Other countries have a strong system or a powerful agency set up for the protection of children. Initially, in Australia the system was difficult to approach by they later revamped the system which made it easy for everyone to approach. After the revamp, it is working effectively. To effectively protect children, we must enact a new legislation coupled with setting up a powerful system for them. The researcher suggests that developing a new independent agency exclusively under the umbrella of ministry of women and children for the protection of children will help improve the situation. At present, we have child line foundation wherein they are not assigned with any powers and their working in different states is not up to the mark. The new independent agency must be codified efficient enough to work at a national level. Every single issue dealing with children must come under their purview. They must be responsible to collect data and make timely recommendations to help the state in framing policies and legislations according to the needs of children. It may differ from place to place, culture to culture etc.

ENLIGHTENING PARENTS

After/during pregnancy and at different ages during the growth of a child, it must be made mandatory for health institutions or child protection agencies to give proper guidance to the parents. If required, they should go through guidance measures that will help improve the lives of children. Health professionals working with mothers and young children must be trained. The training must be given in the field of risk assessment, suicidal ideas and thoughts about harming their son/daughter.

CHILDREN SHOULD BE TAUGHT ABOUT THEIR RIGHTS

The government must set up child friendly agencies or offices at different levels. Children of different age groups should be able to approach these offices hassle-free and without any procedures. The details of such offices, their rights etc., must be mandatorily taught at schools as a part of their curriculum. These agencies' responsibilities must include access to community support services and respite care for parents of sick children. Make family planning and advice services available to teenagers and young adults. Work on reducing the

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stigma and fear of informing social services about events. Additional research is needed to gain a better understanding of these unfortunate events so that more solutions and recommendations may be made to avoid filicide.

PARTICIPATION OF CHILDREN

As stated in the United Nations Convention on the Rights of the Child, all children are created equal and have human rights, including the right to food and shelter, health care and education, as well as the right to be free from violence, neglect and exploitation. In addition, the Convention provides that children have the right to participate in decision-making and that their ideas should be given appropriate consideration in accordance with their age and maturity. This means that children have the right to be involved in and consult on issues that affect them, as well as to participate in decision-making processes. The United Nations Convention on the Rights of the Child (UNCRC) mandates that children have the right to freedom of expression, to create and join associations, and to seek and receive relevant information. These rights should give children the ability to effect positive change in their own lives and to help them construct a brighter future. The participation of children in decision making is the recommendation which is already suggested by UNCRC.

CONCLUSION

Several of the society's forefathers unanimously agreed on the value of children in the world. Sir John F. Kennedy, the late US president, once stated, "Children are the world's most valuable resources and its best hope for the future." Several atrocities have occurred throughout history, and India has progressed along the path of development. The shared purpose here is to secure the safety of the children and to provide a tranquil environment in which they can grow. There are various acts in circulation that all target distinct acts of cruelty directed towards minors, such as discrimination, exploitation, work, and marriage. There is, however, a dearth of active implementation.

The cause for this, is also exacerbated by a lack of awareness of the rights that are provided to children. In retrospect, it is critical to realise that crafting a legislation is only a first step toward a complete answer. As a result, there is a need for in-depth research into the societal issues that are hurting society, as well as raising awareness about them. Child marriages still

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occur in certain rural areas of India, a large number of rapes go unreported, and the literacy rate remains low. The laws that govern them must be reviewed and given special attention. The multitude of legislation plainly demonstrates the apparent loopholes and lax enforcement that allow for horrible atrocities to continue to occur.

As a result, a child-centred culture must be formed. The legal system should interpret legislation in light of the CRC's rights and norms. The youngster will be able to seek justice through the judicial system as a result of this. All children's laws must be examined in light of the CRC and its standards, and there must be connections between them. The Indian judicial system has a long way to go in terms of protecting children's rights and delivering justice to them.

Justice for children cannot be achieved just through legal reform. Among the various service providers – doctors, teachers, lawyers, judges, police, volunteers, parents, trade unions, and social workers – the most effective preventive measure is raising awareness of such possible abuse and how to deal with it, so that they can significantly reduce the risk of abuse, if it does occur, by responding appropriately. As a result, these issues must be addressed as soon as possible. Above all, the universal legal principle of making policies, establishing structures and processes, and taking acts that are always and inevitably in the best interests of the child must be followed. Let the child flourish as a flower with the nourishment of rights, the fruits of liberty, and the care and attention of both parents and the state under the auspices of society. The fight for the achievement of children's rights will be lengthy and winding.