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FILICIDE IN INDIA: A DOCTRINAL STUDY OF CRIMINAL LIABILITY, MENTAL ILLNESS AND SENTENCING UNDER THE BHARATIYA NYAYA SANHITA, 2023

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Abstract

Filicide, the killing of a child by a parent, is generally considered one of the most serious forms of intra-family homicide. The offense is especially disturbing because the offender has a position of trust, care and responsibility toward the victim. Though Indian criminal law is unique in nature, yet “filicide” as an independent defined offense is not recognized for the time being. A parent killing a child is generally dealt with under the general provisions relating to culpable homicide and murder and such other provisions as may be relevant. The passing of the Bharatiya Nyaya Sanhita, 2023 (BNS) is an appropriate occasion to revisit the question of whether the existing framework is sufficient to handle the unique nature of filicide.

This doctrinal research explores the legal framework in India regarding the filicide. These are Sections 22, 93, 100, 101, 103, 105, 107 and 109 of the BNS. It considers the distinction between culpable homicide and murder, the role of motive, the defense of unsoundness of mind, evidentiary issues and sentencing. It also discusses important judicial doctrines laid down under the Indian Penal Code such as Supreme Court’s discussion of legal insanity, mens rea and the difference between murder and culpable homicide. The study argues that although the BNS is able to prosecute most cases of filicide, it does not sufficiently consider the unique criminological, psychological and familial circumstances which are linked to the killing of children by parents. The absence of a statutory framework could also lead to inconsistent treatment of mental illness, domestic violence, parental distress, altruistic motives and other mitigating circumstances. The paper ends with recommendations for judicial guidelines, systematic data collection, psychiatric assessment in appropriate cases, preventive intervention and a more coordinated child-protection framework.

Keywords: Filicide, Child Killing, Bharatiya Nyaya Sanhita, Murder, Culpable Homicide, Mental Illness, Legal Insanity, Sentencing, Child Protection, Criminal Law.

1. INTRODUCTION

The families are traditionally been viewed as the primary institution for the protection, nurturing and development of children¹. In this structure, parents have a special place because children are usually dependent on parents for physical protection, emotional support and basic needs. Thus, the killing of a child by a parent is not just a homicide, but also a profound breach of the trust and responsibility intrinsic to the parent-child relationship.

“Filicide” usually means the killing of one’s own child by a parent. This includes paternal filicide and maternal filicide². In the larger category of neonaticide, infanticide and filicide are usually differentiated by the age of the victim and the context of the killing. International literature has recognized a number of motives for maternal filicide such as altruistic beliefs, psychotic conditions, unwanted-child motives and serious psychosocial problems³.

The legal position in India is distinct from jurisdictions which have enacted special offenses or sentencing provisions dealing with killing of children by parents⁴. The Indian criminal law as it stands today does not recognize any specific general offense by the name of “filicide”⁵. Instead, the main determinant of criminal liability is the general law on homicide. Section 100 defines culpable homicide under BNS and Section 101⁶ defines murder. Section 103 lays down punishment for murder, Section 105 lays down punishment for culpable homicide not amounting to murder.

This raises a significant legal question: **whether a general approach to homicide adequately takes into account the specific facts of filicide.**

This question is of special importance in cases where a parent kills a child on grounds of mental illness, serious psychological disturbance, domestic violence, extreme economic circumstances or a belief that death will in some way protect the child⁷. At the same time the existence of mental illness cannot automatically exclude criminal liability. In Indian criminal law, medical or psychiatric illness is distinct from the more restricted concept of legal insanity.

Section 22 of the BNS provides a defense to an act committed by a person who, at the time of the act, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. Filicide thus represents an intersection between criminal responsibility, mental health, evidence, family relationships, child protection and

¹ (Christie Merin Manoj, 2022)

² (SG, 2007)

³ (Guru S. Gowda, 2018)

⁴ (Sheikh Shoib, 2022)

⁵ (Patricia Erickson, 2008)

⁶ (MINISTRY OF LAW AND JUSTICE, 2023)

⁷ (Hayes)

sentencing. This paper tries to explore if the existing Indian legal regime has adequately covered that intersection.

2. CONCEPT OF FILICIDE

2.1 Meaning of filicide

Filicide is generally understood as the killing of one's child by a parent⁸. The term may encompass killings committed by biological parents, adoptive parents and, depending upon the scholarly definition adopted, step-parents. The essential characteristic is therefore the existence of a parental relationship between offender and victim. Filicide should be distinguished from ordinary child homicide committed by a stranger. The distinction is significant because parental status can influence:

1. Opportunity to commit the offence
2. Relationship of trust
3. Access to the child
4. Psychological circumstances surrounding the offence
5. Motive
6. Evidentiary circumstances
7. Sentencing considerations

The legal offence may remain murder or culpable homicide, but the factual and psychological context can be substantially different.

2.2 Maternal and paternal filicide

Filicide may be broadly classified as:

- Maternal filicide
- Paternal filicide

Maternal filicide has received considerable attention in psychiatric and criminological literature because of its association, in some cases, with severe mental disorders and the circumstances surrounding pregnancy and childbirth. However, it would be inappropriate to assume that maternal filicide is necessarily associated with mental illness. Likewise, paternal filicide cannot be assumed to arise from any single motive⁹.

⁸ (Josephine Stanton, 2002)

⁹ (Simone Giacco, 2023)

2.3 Neonaticide and infanticide

Neonaticide is usually the killing of a newborn, particularly in the immediate period after birth. The killing of an infant is more generally termed infanticide. The BNS has specific rules about conduct in relation to the birth and death of children. Section 91. The section deals with acts done before the birth with the intention of preventing a child from being born alive or of killing it after its birth. Section 94 deals with concealment of birth by secret disposal of dead body of a child. But these provisions show that Indian criminal law accommodates some special circumstances surrounding the death of a child, although there is no comprehensive offense of filicide¹⁰.

3. STATEMENT OF THE PROBLEM

The principal legal problem is that filicide has distinctive characteristics, while Indian criminal law principally approaches it through general homicide provisions. A parent who intentionally kills a child may be prosecuted for murder under Section 101 read with Section 103 BNS. However, another parent may kill a child in circumstances involving serious mental illness, extreme psychological disturbance, domestic violence, sudden loss of self-control or an alleged belief that death would protect the child.

The law must therefore answer several questions:

1. When does killing a child by a parent constitute murder?
2. When can the offence amount to culpable homicide not amounting to murder?
3. How should mental illness affect criminal responsibility?
4. What evidence should courts consider when legal insanity is pleaded?
5. Can domestic violence and prolonged psychological abuse be relevant to criminal liability?
6. What principles should govern sentencing?
7. Should India recognise filicide as a separate statutory offence?
8. Should special preventive and psychiatric mechanisms be developed?

These questions constitute the central problem of this research.

4. RESEARCH QUESTIONS

This research proceeds on the following questions:

Research Question 1: Whether the existing provisions of the Bharatiya Nyaya Sanhita, 2023

¹⁰ (Pitt Steven E, 1995)

are adequate to deal with different forms of filicide in India?

Research Question 2: How do Indian courts determine criminal responsibility where a parent suffering from mental illness kills his or her child?

Research Question 3: What principles govern the distinction between murder and culpable homicide not amounting to murder in filicide cases?

Research Question 4: What evidentiary principles should be applied when mental illness or legal insanity is pleaded in a filicide prosecution?

Research Question 5: Whether Indian sentencing law adequately takes into account the distinctive circumstances of filicide?

5. OBJECTIVES OF THE STUDY

The objectives of the research are:

1. To examine the concept and nature of filicide.
2. To analyse the legal framework governing filicide under Indian criminal law.
3. To examine the distinction between murder and culpable homicide in cases involving parental killing of children.
4. To analyse the relevance of mental illness and legal insanity.
5. To study judicial approaches to evidence and criminal responsibility.
6. To examine sentencing principles applicable to convicted parents.
7. To identify gaps in the existing legal framework.
8. To suggest appropriate legal and policy reforms for prevention and effective adjudication of filicide.

6. LEGAL FRAMEWORK UNDER THE BHARATIYA NYAYA SANHITA, 2023

6.1 Absence of a separate offence of filicide

One of the most significant findings is that the BNS does not create a separate general offence expressly called “filicide”. Consequently, where a parent intentionally causes the death of a child, the prosecution ordinarily has to establish the ingredients of culpable homicide and, where appropriate, murder. This approach has an important advantage: the law can apply equally to different offenders and victims without requiring a special offence. However, it also creates a disadvantage. The distinctive relationship between the parent and child does not automatically receive independent statutory recognition.

6.2 Section 100 – Culpable homicide

Section 100 BNS provides that a person commits culpable homicide when death is caused by an act done:

- With the intention of causing death;
- With the intention of causing bodily injury likely to cause death; or
- With knowledge that the act is likely to cause death.

The statutory provision therefore focuses on **intention and knowledge**, rather than parental status. In a filicide case, the prosecution must consequently establish the requisite mental element. For example, if a parent intentionally strangles, stabs, shoots or otherwise attacks a child in circumstances demonstrating an intention to cause death, the requirements of culpable homicide are ordinarily satisfied. The more difficult question is whether the homicide amounts to murder.

6.3. Murder under section 101 BNS

Section 101 provides the circumstances in which culpable homicide becomes murder.

The provision covers circumstances involving:

1. Intention to cause death;
2. Intention to cause bodily injury known to be likely to cause death;
3. Intention to cause bodily injury sufficient in the ordinary course of nature to cause death; and
4. Knowledge that the act is so imminently dangerous that it will probably cause death, without justification for taking the risk.

Thus, the fact that the victim is a child does not itself transform every child killing into a special statutory offence. The prosecution must establish the ingredients of murder.

6.4 Exceptions to murder

Section 101 also contains exceptions in which culpable homicide does not amount to murder. The statutory exceptions include grave and sudden provocation, exceeding the right of private defence in specified circumstances, certain acts by public servants, sudden fight and other prescribed circumstances. Such exceptions to filicide should be carefully analyzed by the judiciary. If, for example, a parent says that the killing happened during a sudden quarrel, the court cannot take the relationship between parent and child as a mitigating factor. The statutory requirements of the relevant exception must independently be established.

The BNS itself illustrates the importance of this distinction: where provocation is given by one

person but another person, such as that person's child, is intentionally killed, the statutory illustration treats the killing as murder rather than automatically extending the benefit of the exception. This demonstrates that the victim's identity and the source of provocation can be legally significant.

7. PUNISHMENT FOR MURDER

Section 103(1) BNS provides that a person committing murder may be punished with death or imprisonment for life and is also liable to fine. Consequently, a parent convicted of murdering a child is subject to the same statutory punishment framework as other persons convicted of murder. This raises an important sentencing issue that should parental filicide always be treated in the same manner as a stranger's murder of a child? The answer cannot be that parental status automatically increases or decreases punishment. Instead, courts should consider the established principles governing aggravating and mitigating circumstances.

Relevant circumstances may include:

- Age of the child
- Vulnerability of the victim
- Brutality
- Premeditation
- Motive
- Number of children killed
- Previous abuse
- Mental illness
- Remorse
- Possibility of rehabilitation
- Domestic violence
- Economic and social circumstances
- Conduct before and after the offence

8. CULPABLE HOMICIDE NOT AMOUNTING TO MURDER

Section 105 BNS deals with culpable homicide not amounting to murder. The provision creates different punishment depending upon whether the act was committed with intention or merely knowledge. Where the relevant intention exists, punishment can extend to imprisonment for life and the prescribed term; where the act is committed with knowledge but without the

relevant intention, the punishment is lower. The distinction between murder and culpable homicide has long been recognised as one of the most difficult areas of Indian criminal law. The Supreme Court has repeatedly explained that culpable homicide is the genus and murder is its species. The court must examine the precise intention, nature of injury, circumstances and applicable exceptions rather than mechanically applying labels. This distinction becomes especially important in filicide because the circumstances may vary enormously between cases.

9. MENTAL ILLNESS AND CRIMINAL RESPONSIBILITY

Mental illness is one of the most important dimensions of filicide research. Some instances of parental child killing may occur in the context of severe psychiatric disorders. However, the existence of mental illness does not automatically establish legal insanity.

Section 22 BNS provides:

“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” The provision is the successor to the traditional insanity defence formerly contained in Section 84 IPC.

The crucial words are **“at the time of doing it”**.

Therefore, the central question is not simply whether the accused has a history of mental illness. The court must consider whether the accused was, at the relevant time, incapable of knowing the nature of the act or that the act was wrong or contrary to law. Recent scholarship similarly identifies Section 22 BNS as the continuation of the former Section 84 IPC framework and discusses the distinction between medical and legal insanity.

10. MEDICAL INSANITY AND LEGAL INSANITY

The distinction between medical insanity and legal insanity is fundamental. A psychiatrist may diagnose an individual with:

- Schizophrenia
- Bipolar disorder
- Severe depression
- Psychosis
- Personality disorder
- Another psychiatric condition

However, the existence of such a diagnosis does not necessarily establish the statutory defence

under Section 22. The legal question is whether the condition affected the accused's cognitive capacity in the specific manner required by the statutory provision at the time of the act. Indian judicial decisions have consistently recognised this distinction.

In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*¹¹, the Supreme Court explained important principles concerning insanity. The prosecution continues to bear the fundamental burden of proving guilt beyond reasonable doubt, while the accused raising an exception bears a burden relating to the existence of the circumstances bringing the case within that exception. The Court also recognised that evidence produced by either side may create reasonable doubt concerning the required mens rea.

11. BURDEN OF PROOF IN INSANITY CASES

The law of evidence is of supreme importance. In the traditional Indian framework, it is the burden of the prosecution to prove the offense and the requisite mens rea beyond reasonable doubt. Where the accused relies on an exception such as insanity, the statutory burden is on him to establish the relevant circumstances. That burden, however, is not the same as the prosecution's burden to prove guilt beyond a reasonable doubt. The Supreme Court's jurisprudence, particularly *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, has explained that the accused's burden is comparable to the standard applicable to civil proceedings, namely the preponderance of probability.

The accused may establish the defence through:

- Medical records
- Psychiatric reports
- Testimony of doctors
- Previous treatment
- Behaviour before the offence
- Conduct immediately after the offence
- Statements of relatives
- Surrounding circumstances
- Prosecution evidence itself

This is particularly important in filicide because a parent may have a history of psychiatric symptoms that is known to relatives but was never formally diagnosed.

¹¹ (*Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, 1964)

12. JUDICIAL APPROACH TO INSANITY

Indian courts have cautioned against mistaking strange behavior for legal insanity. In *Hari Singh Gond v. State of Madhya Pradesh*¹², the Supreme Court emphasized the difference between medical insanity and legal insanity. Mental abnormality or unusual behavior alone is not sufficient. The statutory test is what the capacity of the person was at the time of commission to know the nature of the act or its wrongfulness. In *Surendra Mishra v. State of Jharkhand*¹³ also the court reiterated that the legal defense is not attracted in all forms of mental illness. The Supreme Court in *Shrikant Anandrao Bhosale v. State of Maharashtra*¹⁴ considered the history of psychiatric illness and the context in which it arose in relation to the plea of insanity. These authorities demonstrate that courts should approach the issue with caution and evidence, not assuming that a psychiatric diagnosis is determinative.

13. FILICIDE AND PSYCHIATRIC EVIDENCE

A major research gap concerns the manner in which psychiatric evidence is obtained and evaluated. In an appropriate filicide case, the court may need to examine:

1. Whether the accused had a previous psychiatric history
2. Whether the accused received treatment
3. Whether medication was prescribed
4. Whether medication was being taken
5. Whether relatives observed abnormal behaviour
6. Whether there were previous suicidal or homicidal thoughts
7. Whether there were delusions or hallucinations
8. Whether the accused understood the identity of the victim
9. Whether the accused attempted to conceal the offence
10. Whether the accused understood that the conduct was wrong

However, the final legal conclusion remains with the court. The psychiatrist provides medical evidence; the court applies the statutory legal test.

14. FILICIDE AND DOMESTIC VIOLENCE

Another important dimension is domestic violence. A parent, particularly a mother, may allege that prolonged domestic violence, coercive control, economic dependence or threats from a

¹² (*Hari Singh Gond v. State of Madhya Pradesh*, 2008)

¹³ (*Surendra Mishra v. State of Jharkhand*, 2018)

¹⁴ (*Shrikant Anandrao Bhosale v. State of Maharashtra*, 2002)

spouse contributed to the killing of children or to a filicide-suicide situation. This does not automatically provide a defence. Nevertheless, the circumstances may be relevant to:

- Intention
- Motive
- Provocation
- Mental condition
- Sentencing
- Rehabilitation
- The credibility of the accused's explanation

Indian legal scholarship on women who kill in reaction to domestic violence has also examined cases in which women accused of killing their children also attempted suicide, and considered how the frameworks of insanity and provocation may intersect with prolonged violence. This implies that filicide is not always to be understood simply through the lens of individual criminality. In some instances, it may also be important to consider the broader family environment.

15. FILICIDE-SUICIDE

A particularly serious category is **filicide-suicide**, in which a parent kills one or more children and subsequently attempts or commits suicide. This creates unique legal difficulties because the principal offender may survive only temporarily or may die before trial. Where a child is intentionally killed, the homicide provisions remain applicable. Where a child is induced or assisted to commit suicide, Section 107 BNS becomes particularly important. Section 107 specifically deals with abetment of suicide of a child or person of unsound mind and provides a substantially enhanced punishment, including death, life imprisonment or imprisonment up to ten years, together with fine. This demonstrates that the BNS already recognises the special vulnerability of children in the context of suicide. Nevertheless, there is no comprehensive statutory framework dealing with filicide-suicide as a distinct phenomenon.

16. EVIDENTIARY ISSUES IN FILICIDE CASES

Filicide cases frequently occur inside the home, making eyewitness evidence limited. The prosecution may therefore rely upon:

- Circumstantial evidence
- Medical evidence

- Forensic evidence
- DNA evidence
- Post-mortem findings
- Electronic evidence
- Recovery of weapons
- Conduct of the accused
- Extra-judicial confession, where legally admissible
- Dying declarations where applicable
- Statements of neighbours and relatives

Where the child is the parent or caregiver, access to the child may itself be an important circumstantial fact. "But courts should not convict because a parent had the opportunity or because the killing seems to be contrary to normal parental instinct. The recent decision of the Supreme Court in the case of *Neelam Kumari v. State*¹⁵ demonstrates the importance of critical analysis of evidence in an alleged case of maternal filicide. The Supreme Court in 2025 acquitted the appellant in a long pending case relating to the death of the infant son of the appellant. It highlighted the difficulty of accepting the case of the prosecution when the circumstances and the alleged conduct did not prove guilt beyond a reasonable doubt. The case demonstrates an important principle: **the emotional improbability of a parent killing a child cannot replace proof beyond reasonable doubt.**

17. THE SIGNIFICANCE OF MOTIVE

Motive is not always an essential ingredient of murder where direct evidence and other evidence establish guilt. Nevertheless, motive can be particularly useful in circumstantial filicide cases. Possible motives identified in scholarly literature include:

- Altruistic motivation
- Psychotic motivation
- Unwanted-child motivation
- Revenge against a spouse
- Financial stress
- Family conflict
- Fear of social stigma
- Domestic violence

¹⁵ (*Neelam Kumari v. The State of Himachal Pradesh*, 2025)

- Perceived inability to care for the child
- Jealousy
- Punishment of the other parent
- Suicide-related motivations

International literature identifies several different motivational categories in maternal filicide and emphasises that prevention cannot be effective unless different causal pathways are recognised. Indian courts should therefore avoid assuming that all filicide cases have the same motive.

18. SENTENCING IN FILICIDE CASES

Sentencing is one of the most significant unresolved issues. Section 103 BNS provides death or imprisonment for life for murder. However, the choice between these punishments must be made according to established constitutional and judicial principles. The Supreme Court's death-penalty jurisprudence requires courts to consider aggravating and mitigating circumstances and determine whether the case falls within the exceptional category warranting capital punishment.

In filicide cases, aggravating circumstances may include:

- Deliberate planning
- Multiple killings
- Extreme brutality
- Torture
- Concealment
- Repeated abuse
- Vulnerability of the victim
- Absence of provocation
- Exceptional cruelty

Mitigating circumstances may include:

- Severe mental illness
- Absence of previous criminal history
- Young age of the accused
- Genuine remorse
- Possibility of rehabilitation
- Extreme domestic violence
- Prolonged psychological abuse

- Other circumstances recognised by law

The parental relationship itself should not automatically operate as either an aggravating or mitigating factor.

19. RECENT JUDICIAL DEVELOPMENTS

Recent Indian decisions demonstrate that the legal treatment of parent-child killings continues to evolve. In *Chunni Bai v. State of Chhattisgarh*¹⁶, decided by the Supreme Court in 2025, the Court examined a homicide involving allegations that the accused had killed her children and considered, among other matters, the plea of unsoundness of mind, the distinction between murder and culpable homicide and the burden associated with an insanity defence. The decision is particularly valuable for this research because it demonstrates the continuing importance of the traditional principles concerning:

- Section 84 IPC
- Section 105 Evidence Act
- Legal insanity
- Mens rea
- Murder versus culpable homicide
- Assessment of surrounding circumstances

These proceedings were instituted under the old IPC but the legal reasoning is useful to understand equivalent principles under the BNS. In another Supreme Court development in 2025, a mother's conviction in the case of the murder of her two minor daughters was changed to culpable homicide not amounting to murder, emphasizing the significance of intention, circumstances and the distinction between Sections 302 and 304 IPC. These developments indicate that the central problem in filicide is not simply whether a parent is responsible for the death of the child. The court must decide what the mental state was at the relevant time and what legal classification flows from the evidence.

20. CRITICAL ANALYSIS

The existing Indian legal framework has several strengths, including sufficiently broad general homicide provisions to prosecute intentional killing of children, Section 22 BNS as a legal mechanism for considering unsoundness of mind, recognition of different degrees of homicide, and sentencing discretion that allows courts to consider individual case circumstances;

¹⁶ (Chunni Bai v. State of Chhattisgarh, 2025)

however, several weaknesses remain, such as the absence of a statutory definition of filicide which leads courts, researchers, and law-enforcement agencies to classify the same factual phenomenon differently, though a dedicated definition could improve data collection and research without necessarily creating a separate offence as well as the lack of a sufficiently systematic national database specifically recording parental relationship, victim age, maternal or paternal offender, motive, mental illness, number of children killed, filicide-suicide, conviction, acquittal, and sentence, without which effective policy formulation becomes difficult; there is also inadequate integration of mental health, since the criminal justice system often encounters mental illness only after the offence has occurred whereas a preventive approach would identify high-risk situations earlier, difficulty in applying legal insanity because the difference between medical and legal insanity creates difficulties for courts and psychiatric disorders can fluctuate while evidence may be unavailable if the accused was never previously treated, meaning psychiatric assessment must be conducted carefully and close to the relevant period whenever legally appropriate, and a lack of sentencing guidelines specific to parental child killing, since although general sentencing principles apply, judicial consideration of filicide-specific circumstances is not fully systematised, and a structured judicial framework could improve consistency without eliminating judicial discretion.

21. WHETHER INDIA NEEDS A SEPARATE OFFENCE OF FILICIDE

The creation of a separate offence requires careful consideration, and while there are arguments in favour such as recognising the special nature of parental child killing, improving statistical recording, facilitating research, enabling specialised sentencing considerations, and emphasising the heightened duty of parental care there are also arguments against, including that a separate offence may unnecessarily complicate the existing homicide framework and that filicide covers very different situations, since a parent suffering from acute psychosis, a parent killing a child for revenge, a parent acting after prolonged domestic abuse, and a parent intentionally killing a child for financial motives cannot necessarily be treated identically; therefore, this research does not necessarily recommend a new substantive offence carrying an automatic special punishment, and a preferable approach may be to create a statutory definition for data and procedural purposes while retaining murder and culpable homicide as the substantive offences.

22. PROPOSED LEGAL REFORMS

22.1 Statutory recognition for data collection

The legislature should consider defining filicide for statistical and research purposes.

A possible definition could be:

“Filicide” means the unlawful causing of the death of a child by a parent, adoptive parent or other person having a legally recognised parental relationship with the child. This definition need not automatically create a new punishment.

22.2 Mandatory recording of parental relationship

Police and prosecution records concerning child homicide should record whether the accused is:

- Parent
- Step-parent
- Adoptive parent
- Guardian
- Caregiver
- Unrelated person

22.3 Psychiatric assessment

Where credible evidence indicates significant mental illness, psychiatric assessment should be undertaken in accordance with law and appropriate procedural safeguards. The purpose should not be to presume innocence or guilt but to assist the court in determining the accused's mental condition.

22.4 Judicial guidelines

The Supreme Court or appropriate legislative authority could develop guidelines concerning consideration of:

- Mental illness
- Domestic violence
- Coercive control
- Psychiatric history
- Motive
- Suicide attempts
- Previous child abuse

- Remorse
- Rehabilitation
- Family circumstances

22.5 Early intervention

Prevention must extend beyond criminal prosecution. Where families display serious risk factors, appropriate mental-health and child-protection services should be available. Such intervention is especially important where there are:

- Previous threats against children
- Severe psychiatric symptoms
- Suicide attempts
- Domestic violence
- Substance abuse
- Severe social isolation
- Previous child abuse

22.6 Training of police and prosecutors

Police officers and prosecutors should receive specialised training concerning:

- Psychiatric evidence
- Child deaths
- Domestic violence
- Circumstantial evidence
- Forensic investigation
- Legal insanity

23. ROLE OF CHILD-PROTECTION LAW

Filicide should not be examined exclusively through criminal law, as the Juvenile Justice (Care and Protection of Children) Act, 2015 and other child-protection mechanisms are relevant to prevention, and a child who is at serious risk within the family may require intervention before the occurrence of a homicide; the central policy objective should therefore shift away from a model focused on crime, investigation, prosecution, and punishment towards a broader model that begins with risk identification and moves through protection, mental-health intervention, family support, and investigation where necessary, before proceeding to prosecution, rehabilitation, and sentencing, an integrated approach that is more consistent with the

preventive objectives of child-protection law.

24. COMPARATIVE PERSPECTIVE

A comparative examination may assist Indian policymakers. Different jurisdictions have adopted different approaches to parental killing of children. Some legal systems have specific provisions concerning infanticide or parental child killing, while others, like India, rely principally upon general homicide provisions. The comparative lesson is not necessarily that India should copy another jurisdiction. Instead, comparative law demonstrates that three issues require careful balance:

1. Protection of children
2. Accountability of offenders
3. Recognition of mental illness and exceptional circumstances

The Indian approach should therefore be developed according to constitutional principles and domestic social realities.

25. RECOMMENDATIONS

Based upon the doctrinal analysis, the following recommendations are proposed:

1. Statutory recognition of filicide for research and data purposes should be considered.
2. A national database concerning child homicide by parents or caregivers should be developed.
3. Appropriate cases should receive professional psychiatric assessment.
4. Police should be trained in recognising and preserving mental-health and forensic evidence.
5. Courts should carefully distinguish medical insanity from legal insanity.
6. Sentencing courts should expressly consider mental illness, domestic violence, motive and possibility of rehabilitation where supported by evidence.
7. Child-protection authorities should establish mechanisms for early identification of high-risk families.
8. Mental-health services should be made accessible to vulnerable parents and families.
9. Research institutions should conduct empirical studies alongside doctrinal research.
10. The government should periodically review child homicide data and formulate evidence-based preventive policies.

26. CONCLUSION

Filicide represents one of the most complex forms of homicide because it combines the criminal law of life and bodily integrity with family relationships, parental responsibility, mental health and child protection. The Bharatiya Nyaya Sanhita, 2023 does not create a separate general offence of filicide. Instead, parental killing of a child is ordinarily prosecuted under the general law of culpable homicide and murder. Sections 100 and 101 establish the substantive framework, while Sections 103 and 105 provide the principal punishment provisions. Section 22 provides an important exception concerning persons who, because of unsoundness of mind at the time of the act, were incapable of knowing the nature of the act or that it was wrong or contrary to law. The existing framework is therefore not legally incapable of dealing with filicide. The principal weakness is instead the absence of a framework that expressly recognises its distinctive characteristics. The most important legal issue is the determination of the accused's mental state at the time of the killing. Courts must distinguish medical mental illness from legal insanity and must evaluate psychiatric evidence together with the complete factual circumstances. The existence of mental illness cannot by itself establish a statutory defence. At the same time, criminal justice should not ignore the social and psychological circumstances surrounding parental child killing. Domestic violence, severe psychological distress, suicidal behaviour, economic circumstances and family conflict may be relevant to understanding motive, intention, mental state and sentencing. The law must maintain a careful balance. Children require the highest level of legal protection because of their vulnerability. At the same time, criminal responsibility must be determined through established principles of mens rea, evidence and fair trial. Mental illness must neither be ignored nor automatically converted into an excuse for criminal conduct. Accordingly, this research concludes that India does not necessarily require an entirely separate substantive offence of filicide, but it does require greater statutory, judicial and institutional recognition of filicide as a distinctive category of child homicide. The most appropriate reform would be to introduce a clear definition for research and statistical purposes, develop reliable national data, strengthen psychiatric assessment, provide specialised training for investigators and prosecutors, and establish clearer sentencing and preventive guidelines. Ultimately, the effective response to filicide cannot begin only after a child has died. The criminal law must be supported by preventive child-protection and mental-health mechanisms capable of identifying serious risks before they culminate in irreversible harm. Filicide should therefore be approached not merely as “a parent who killed a child”, but as a complex legal phenomenon requiring the coordinated application of criminal law, evidence law, mental-health law, child-protection law and sentencing principles.

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