

Infanticide: is the law fit for purpose?



Are the criminal law & criminal justice responses to cases where a woman is suspected of causing the death of her infant or late term foetus fit for purpose? **Dr Emma Milne**

IN BRIEF

► The context of suspicious infant deaths, the vulnerability of victims, and the nature of the criminal law associated with these killings makes this a pressing area for further investigation.

► Legal professionals who have experience of such cases—barristers, solicitors (including members of the Crown Prosecution Service), and retired judges, are in a unique position to offer insights into the law and its application.

Is the criminal law that surrounds suspected infant killings by mothers fit for purpose? Does the offence of infanticide still work? Is it right that a woman convicted of infanticide is not imprisoned, whereas a woman whose defence of infanticide fails will serve 20 years? To begin to answer these and other questions raised by cases where a woman is suspected of causing the death of her infant or late term foetus, I am conducting interviews with legal professionals with experience of relevant cases, asking them to provide valuable insights into the law and its application.

Infanticide: the continuation of mothers' crimes

Newborn child killing is an enduring crime, despite being thought of as a historical phenomenon. In general, it is widely held that women commit minimal violent crime. Yet, when an infant dies in suspicious circumstances, that child's mother is a likely suspect. The first year of a child's life is the time when he or she is most at risk of being intentionally killed. While my previous research uncovered the extreme desperation faced by many pregnant women and mothers in these cases, the next step is to find out more about how the law is applied, and whether the use of offences/defences that are available for

these cases continue to be appropriate and workable.

Outdated criminal law?

Historically, in England and Wales, the legal response to such forms of violence by mothers has been sympathetic and lenient. The Infanticide Act 1938 has traditionally provided reprieve from the mandatory life sentence for murder, or indeed a custodial sentence of any length. A woman has committed infanticide if she kills her biological child aged under one year, while 'the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child'.

Considerable criticism has been directed at the Infanticide Act and the basis for the lenient treatment, notably the focus on lactation. Furthermore, analysis of contemporary cases indicates that use of the Infanticide Act is no longer the norm, with three women being convicted of the murder of their newborn children in the past five years.

Due to the nature of the deaths of infants and late-term foetuses, a number of offences other than infanticide are employed to criminalise women's conduct: murder, manslaughter due to diminished responsibility, concealment of birth, preventing lawful and decent burial, procuring a miscarriage, child destruction, and child cruelty. The relevant statutes create a mosaic of offences that date back to the 1860s. What is unclear is whether these dated and overlapping pieces of legislation are fit for purpose in the twenty-first century.

The need for further research

It is essential that we assess if the current

law is responding appropriately to cases of suspected maternal infant killing. Without this research, we are unable to determine if reform of the criminal law or criminal justice process is needed to ensure 'justice' is being done in these cases. Consequently, an evaluation of what 'justice' looks like in these cases is needed, and legal professionals with relevant experience are best placed to provide insight on these matters.

Project findings will have value beyond their scholarly merit, being useful to legal professionals by informing their practice in prosecutorial decision-making, evolving defence strategy, and shaping sentencing good practice. Findings will also be relevant to ongoing reviews of the law conducted by Parliament and the Law Commission.

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Get involved

To investigate whether the current criminal law and criminal justice responses to suspected maternal infanticide are working and appropriate, I am conducting interviews with professionals who work in the criminal justice system and who have experience of relevant cases. I am seeking barristers, solicitors (prosecution and defence, including members of the Crown Prosecution Service), and retired judges who have been involved in one or more cases where a woman has been suspected of causing the death of her infant or late-term foetus, to take part in the research. These professionals are in a unique position to offer insights into the law and its application.

If you are interested in taking part in the research, please contact me to discuss the project and your potential involvement: emma.milne@durham.ac.uk.

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