
THE OFFENCE OF INFANTICIDE TO VIETNAMESE CRIMINAL CODE COMPARISON WITH OTHER COUNTRIES IN THE WORLD

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ABSTRACT

A mother's love is one of the most sacred emotions of humanity, regardless of ethnicity or culture; however, a mother's cruel rejection of such humanistic emotion and ending the life of the child she struggled to conceive and give birth to produces uneasiness and mistrust in people. There must be a reason why an average person would violate this consistent moral requirement. As a result of societal factors, the legal policies of a number of nations, including Vietnam, include infanticide as a crime with a number of special components, such as the offender endangering the life of a special victim under no less extraordinary situations and circumstances. All of the above distinctive conditions also produce a unique crime that partially reflects the state's humanitarian policy. Due to the unique character of this offence, the legislation governing its implementation and enforcement must be carefully addressed. This article compares and contrasts Vietnamese law with the legal systems of countries that record infanticide as a crime, analyses and researches with an interdisciplinary approach to identify outstanding deficiencies, improve Vietnamese criminal law, ensure the criminal law's adaptability to changing times, and better protect the rights of newborn children and mothers.

Keywords: Infanticide, murder, newborn child.

1. Introduction

The 1959 United Nations Declaration on the Rights of the Child states: "*Children, due to their physical and mental immaturity, require special care and protection, including appropriate physical protection before and after birth*", and the 1989 United Nations Convention on the Rights of the Child reaffirms this statement. Everyone has the right to life, including children.

Children's lives are essentially equivalent to those of other people, and when their lives are infringed, they are protected by criminal law for the same crimes as against other people, and in some cases even more so. But there are exceptions, such as when infants are killed by their mothers in the crime of infanticide, for which the criminal responsibility is reduced compared to murder. However, this does not negate the child's right; it demonstrates the law's humane policy towards the mother in exceptional circumstances.

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The definition of infanticide varies from country to country. It is not as consistent as ordinary murder due to differences in legislative perspectives on the age of a newborn child, the subject of the act, the cause, whether or not there is a specific provision for this crime, etc. Infanticide refers to killing a newborn child by or with the consent of the child's parents in the United States, where infanticide is not considered a separate crime (Garner, 2009, p. 847). Because infanticide is not criminalised separately, it is still considered a form of murder. It is a social phenomenon in which the parents are the subjects of the act, and the babies are the victims. Infanticide is defined as the killing of a child under the age of one year by a mother in Britain (England and Wales), the country with the most frequent infanticide laws and the one that many common-law nations throughout the world follow (Martin, 2003, p. 250). The definition of "murdering a newborn" in Britain has been constrained; the mother is the subject, and the infant is defined as a child of 12 months old. Under certain legal circumstances, mothers who kill their infants may be held legally accountable.

During Vietnam's history, the legislation regarding the crime of infanticide has undergone numerous modifications. Before the promulgation of the Criminal Code in 1985, Vietnam lacked any provisions about this crime; therefore, if a mother murdered her newborn child, she would have been held criminally liable as if she had murdered any other stranger, without exception. After the first codification, to demonstrate the state's humanitarian policy, the Criminal Code of 1985, in regulating the crime of murder, set aside a section to provide for the mitigating factor "*The mother under the heavy influence of*

outdated ideology or special objective circumstances, killing or abandoning a newborn, resulting in the child's death, shall be subject to non-custodial reform for up to one year or imprisonment from three months to two years" (clause 4, Article 101), at that time, the act of infanticide was just considered a mitigating penalty for murder.

In its second codification, the Criminal Code of 1999 established infanticide as a distinct offence from murder. The definition of infanticide at that time, however, included both killing and abandoning the newborn, resulting in the child's death. In the third codification, the Criminal Code of 2015, the legislators have divided the two acts because they recognise that they have distinct characteristics despite being governed by the same legislation. Therefore, the content of the crime of infanticide has been narrowed to "*A mother who, under the heavy influence of outmoded ideology or in exceptional objective circumstances, murders her own newborn child within 07 days of its birth shall be sentenced to between 06 months and 03 years in prison"* (clause 4, Article 124).

Based on each country's economic, political, cultural, and social conditions, the criminal justice policy in general and the legislation on the crime of infanticide in particular display the legislative maturity of each legal system. The study of comparisons to identify similarities and differences is highly relevant in the current setting of globalisation and integration. Following over 40 years of evolution, the restrictions on the crime of infanticide have altered via the codifications of the criminal code. However, the changes have been mostly in form and not in substance. An unmodified regulation has never been

synonymous with a faultless regulation because, in general, many components of the crime of infanticide are no longer applicable, with content remaining to resemble the era and not keeping up with the times. Thus, comparative research with foreign laws will help Vietnamese legislators determine the precise position of this regulation on the global legal map and whether or not it is still relevant to the global trend and general circumstances. This is the purpose of the research presented in this article, which compares regulations by main topic between Vietnam and specific countries, identifies beneficial elements and existing flaws, and recommends revisions to Vietnamese laws based on the experiences of progressive systems.

2. Methodology

This article is a legal analysis of the existing social norms governing social connections related to the crime of infanticide in Vietnam and international law. This article's primary method consists of evaluating the written law, conducting legal research, and interpreting legal norms to determine how the law is applied in practise and to speculate on the lawmakers' intentions when creating such legislation. The 2015 Vietnamese Criminal Code and related legal documents of Vietnam will serve as the primary legal source for analysis in this article. Also, for research reasons, the Criminal Acts of nations across the world will be researched to meet the needs of the article. In addition, this essay is based on the significant study approach of comparative jurisprudence, from the standpoint of comparing the legal institution of one country with similar legal institutions of other countries, and then highlighting the similarities and differences across nations.

Since 2012, the People's Court has heard criminal offences relating to banking activity.

In addition, the article employs a system of general research methods of the social sciences, such as historical research methods, structural research methods, and logical reasoning methods, to evaluate scientific research works of law, sociology, and medicine published in specialised scientific journals to clarify scientific arguments and conduct an in-depth evaluation and analysis of the appropriate or inappropriate provisions of the law on the crime of infanticide.

3. Result

3.1 Overview of the offence of infanticide

The habit of animals killing their young is a typical occurrence in the natural world. The two most frequently accepted hypotheses regarding the killing of young animals in animals are the "sexual selection" and "social pathology" hypotheses (Hausfater, 1984, p. 500). It is claimed that animals kill their young for additional benefits, such as: (i) viewing the young as a resource; (ii) eliminating competitors; (iii) increasing maternal survival or fertility by eliminating offspring carrying infections, deformities, etc.; and (iv) increasing reproductive access. Instances in which animals destroy their young without benefit are termed "pathology" (Hrdy, 1979, p. 13). Humans are also animals, subject to the requirements of nature for life. Hence there is a long history of mothers killing their newborns. Because primitive existence was so tightly related to nature, it was initially reasonable to murder a sick child for survival's sake. Yet gradually, as the production level rises, humans become less reliant on nature, strengthening the

community link. But, rather than vanishing, killing infants adds a new reason to their origin.

In the history of Vietnam, for a long time, girls were the primary subjects for mothers to commit the act of infanticide. As in China, with the alienation of the division of labour, resulting in the different roles of men and women in families and populations, the ideology of respecting men and disdaining women has formed and dominated human consciousness for a long period of time. In ancient times, in *Shijing*, an old Chinese classic, there is a poem that states that if a boy is born, he can lie on the bed and wear clothes, but if a girl is born, she must lie on the ground and wear only diapers; if boys are expected to become kings, girls are expected to simply not cause trouble for their parents; *“the different treatment to boys and girls reflects different expectations about what each will have to pay the price and contribute to the family, and this attitude then contributes to the killing of female infants”* (Mungello, 2008, p. 4). This is essentially the extension of sexual selection from animal societies to the social order of humans.

In addition, one of the most frequently cited incidents of infanticide involves a mother murdering her illegitimate child. In the social schedules of both the East and the West, when marriage-related honour and taboos are pushed to the utmost, a woman who becomes pregnant and delivers birth before marriage will incur society's disapproval and be regarded as a disgrace. In Britain, for instance, an act was enacted in 1623 with the presumption that, contrary to the principle of presumption of innocence, if an illegitimate child was found dead, the child was presumed to have been murdered by its mother, unless the mother could provide evidence that the child was born dead. Until

1830, when the National Assembly enacted a new act shifting the burden of proof to the accuser, if convicted, the penalty for this case could be up to the death penalty like ordinary murder, vice versa receive only a maximum sentence of 2 years in prison for concealing the birth of a child (Oberman, 2002, p. 7-8), which demonstrates the prevalence of illegitimate killings of mothers during that time.

Controversial is the granting of criminal culpability up to the death penalty for a mother who murders her newborn due to the notion that a child born outside of (legal) marriage is regarded to be outside the law and its protection. Kant, the famous German philosopher and ethologist, stated in his work *The Metaphysics of Morals* that the mother's act of killing illegitimate newborn children concerned with sex honour and in this case, the mother finds herself *“in the state of nature, and that these atc[s]... are certainly punishable but cannot be punished with death by the supreme power”* (Kant, 1991, p. 144). According to the moral of the time, infanticide should not be punished with the death penalty like ordinary murder, which means, according to Kant, the act of infanticide should be mitigated or further eliminated (Uleman, 2000, p. 173).

A new aspect that contributed to the widespread acceptance of infanticide in the twentieth century was the psychological impact of childbirth on the mother. Britain led the way in recognising this issue with the Infanticide Act of 1922, amended and expanded by the Infanticide Act of 1938, which recognised a separate crime that considers the mother's mental condition, with less severe punishment than before.

This British act has been replicated in slightly different forms in many countries, most of which make infanticide lower crime than regular murder in

most countries (Oberman, 1996, p. 18), including the Russian Federation, Italy, Canada, Vietnam, etc. Yet, the majority of countries in the globe do not have separate infanticide laws. In countries such as the United States, China, France, Germany, Japan, etc., if the circumstances are met, all linked cases can be treated in line with the legislation on common murder and other related crimes.

3.2 Regulations on the offence of infanticide in the law of Vietnam and some countries around the world

3.2.1 The impacted object of the offence of infanticide

Criminals break objects considered social interactions and are protected by criminal law. To counteract criminal abuse, Article 8 of the Criminal Code of 2015 recognises human rights as one of the objects protected by the law. The right to life is the most fundamental and indispensable human right. International documents on human rights have long acknowledged this fundamental right. The 2013 Constitution of Vietnam additionally states, *"Everyone has the right to life. The law protects life. No one shall be deprived of life in violation of the law"* (Article 19). Human life is inviolable, and everyone should respect the lives of others, excepting statutory exceptions. As a crime, murder is an illegal act that endangers the life of another. Infanticide is essentially a concretized type of murder since a newborn is still a human whose life has been taken. In Vietnam and other nations, the child's life is the purpose of the infanticide crime.

- The beginning of life

According to Vietnamese law, a newborn infant is considered a child after 7 days. The law specifies doesn't the

beginning, but stipulates the end of the newborn's status, stating simply that it ends on the 7th day after birth. In linguistic terms, a newborn's status begins at birth. No legal law in Vietnam specifies what a child is born with. Under the 2015 Civil Code of Vietnam, there are only rules on "born and living" for heirs conceived before the person leaving the estate dies. (Article 631). According to the author Nguyen Ngoc Dien, *"every child born successfully is presumed to be alive"* (Dien, 2022, p. 58); however, it is only when determining when a child's life begins that the child has legal capacity and its life is protected since no one can be charged with murder for violating the life of a lifeless entity.

Section 233(1) of Canadian Criminal Code establishes the definition of "the child becomes a human being" to identify the existence of a human being when it is in a living state from the mother's body, whether or not: (i) the breath; (ii) independent circulation; (iii) broken umbilical chord. This is a regulation encapsulating the "born alive" norm of common law countries. To start enjoying rights and protections from the law, a child must be born alive. Before it is born alive, *"... it is clearly a human child, but it is not "in being"* (Dickens, 1994, p. 36). According to Title 1, Section 8 of the United States Code, being born alive to a member of the species homo sapiens (human species) is defined as *"the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion"*. Variations in

identifying the time of birth will result in varying restrictions addressing the scope of the infanticide offence. According to the provisions of Article 106 of the Criminal Code of the Russian Federation, the act of infanticide, in addition to the case after birth, also includes right at the time of birth, that is, during labour, the mother commits the act of killing her child in a state of law can still be prosecuted for infanticide, which shows that Russian criminal law begins to protect the child's life from the moment of birth.

- *The age of newborn babies*

Prior to the Criminal Code of 1985, Vietnamese criminal law did not specify the age of a child to be regarded as a newborn, resulting in uneven understanding; yet, the legal gap was not closed. It took too long because the Judges Council of the Supreme People's Court issued Resolution No. 04-HDTPTANDTC/NQ on November 29th, 1986, defining a newborn child as "*a newborn child within the past seven days*", and the practical activities of the judicial authorities continued to agree on the application of the above period until the 2015 Criminal Code enacted the law officially. The author Dinh Van Que stated that this term is "*compatible with international conventions and other legislation*" when explaining why Vietnamese law picks a 7-day period rather than another (Que, 2020, p. 41). However, this interpretation is totally illogical, as none of the nations analysed below considers a baby to be younger than 7 days, and no other provision in Vietnamese law specifies this duration. In medicine, there is a period that lasts from a few weeks before birth, during birth, and from one to two weeks after birth, termed the perinatal period (Marcovitch, 2009, p. 507), this period is generally agreed to be from the 28th week from conception to one week after birth (i.e. 7 days) (Collin, 2005,

p. 340), this is the period when a newborn is very weak and has a high mortality rate, so it is called perinatal mortality (Marcovitch, 2009, p. 507). This is a suitable time frame for Vietnam to consider when determining the age of a newborn.

Article 106 of the Russian Federation's Criminal Code specifies three instances in which infanticide can be tried as a crime: (i) during birth; (ii) immediately after birth; and (iii) during newborn. When the child is still giving birth in the first instance, it is not essential to determine the child's age. The second case is similar to many countries in the world, where the law uses the word "immediately" to require a brief qualitative period, as in the territory of Taiwan, clause 1, Article 274 of the Criminal Law of The Republic of China also stipulates a reasonable period immediately after birth, the country's case law has recorded instances in which a mother killing her child at 5 days old was not considered infanticide. The case of being referred to as a newborn in Russia is not directly regulated in the law, as it was in Vietnam. Still, this word does not create another interpretation because it has been unified with the term "neonate" in medicine, which refers to a child less than 4 weeks old (Collin, 2005, p. 261). It means a child 28 days old or younger, this regulation is suitable to medicine, so there are no controversy issues in its application.

In addition to the countries that designate the period immediately following birth or do not express it in the law but defer to medicines as above, some nations have a distinct recognition. In Britain, the age to be defined as a newborn is under 12 months. According to the author Resnik, infanticide is a general term. It can be separated into two cases: killing a newborn baby of 24 hours or less (neonaticide) and killing a child older than 24 hours (filicide). On the other hand, "*most neonaticide is*

carried out simply because the child is not wanted" if "altruistic" motivations are cited for killing infants older than 24 hours (Resnik, 1970, p. 1414). According to British statistics, children under one are 4 times more likely to be murdered than the general population. The mother is most likely to be the killer in cases involving infants less than one day old (Marks & Kumar, 1993, p. 329). Countries such as Romania and Norway define a newborn as a youngster less than 24 hours old.

3.2.2 Subjects of special crime

If the crime of murder is applied to subjects who are old enough, have the capacity to perceive and control their behaviour, and satisfy the elements constituting a crime. The crime of infanticide is unique, as the subject of this crime can only be a special subject, i.e., one who fully meets the usual conditions and is accompanied by special signs. According to Vietnamese criminal law and the laws of many other nations, the only individual who can be prosecuted for the crime of infanticide is the mother who gave birth to the child. In cases involving accomplices, there is an exception to the necessity of a distinct subject in Vietnamese criminal law science. As long as the practitioner meets the requirements of a special subject in an accomplice case, the remaining accomplices as other practitioners (in simple accomplice) or organizer, helper, instigator (in complex accomplice) might be examined for criminal culpability for crimes committed by the practitioner without meeting the requirements of special subject. Similarly, if the mother of the child is the perpetrator of infanticide, the other accomplices will also be punished for this crime. The following case law reflects the actuality of this situation in Vietnam:

K and Y, a married couple with a challenging family situation, have 3 young children. Y continued to be pregnant with her 4th child in 2021, and a son was delivered on October 28th, 2021. Y could not raise the child, so she gave it to her husband, K, to dump into the stream, resulting in the child's death. Due to Y's death in a traffic accident before the trial, the Court only convicted K of "infanticide" as a practitioner in the simple accomplice case (Judgment No. 07/2022/HSST dated August 3rd, 2022 of the People's Court of D District, Gia Lai province).

In the opposite direction, the legal science of the Russian Federation has a different approach. Meeting the requirements of a special subject in the case of infanticide is considered mandatory to determine the crime because the same condition of the psychophysiology of the mother leads to this separate crime, and therefore if, in the case of infanticide, accomplices other than the mother would be criminally liable for the crime of murder under point c (child murder) or g point, additionally, (perpetrated by a group of people) in clause 2, Article 105 of the Criminal Code of the Russian Federation with a penalty of up to death. In contrast, the mother is only tried by Article 106 with a lighter penalty (Alexandrovich & Alexandrovna, 2014, p. 271).

Regulations on accomplices in the "crime of infanticide in conditions of material and spiritual abandonment" in Article 578 of the Italian Criminal Code offer a different approach, similar to Vietnam. Companions other than mothers are still prosecuted for this crime but are aware of the mitigating provisions of the law targeting mothers in special circumstances. While the mother is only subject to a sentence of 4 to 12 years in prison (paragraph 1), the accomplice of the assistance is subject to a sentence of not

less than 21 years in prison (paragraph 2) – a penalty comparable to the crime of murder specified in Article 575. In cases where an accomplice commits a crime for the mother's benefit, one-third of the sentence may be reduced (paragraph 3).

3.2.3 The mother's behavior carried out under special circumstances

A mother who kills her infant within 7 days of birth cannot be prosecuted for infanticide because, in addition to the usual conditions, she must also fall into an abnormal state of mind and physiology due to the effects of childbirth; this is considered a prerequisite factor that makes infanticide a lesser offence than murder. According to the provisions of Vietnamese criminal law, there are two signs which are considered in Vietnamese criminal law theory as the motive of the objective of the crime (Vinh, 2021, p. 64); therefore, satisfying one or sometimes both of these signs will determine that the mother is in a unique circumstance, namely: the heavy influence of backwards thinking and a unique objective circumstance.

-Strong influence of retrograde thought: in Vietnamese, "backwards" means "*left behind, unable to keep up with the general growth of society*" (Phe, 2003, p. 535). It can be argued that the heavy influence of backwards thinking is being influenced by outdated ideas, not compatible with the current concept of lifestyle, and not suitable to the progress of society. The mother may have committed the act of infanticide out of fear of public criticism about pregnancy and giving birth out of wedlock, or the harsh opinion of the husband's family that giving birth to a daughter is a disaster, etc. In spite of the fact that the law employs the term "heavy" but does not define its scope, in reality it is commonly believed that the sign of a crime

is met so long as an outmoded ideological element is present, i.e., if it reaches the level of heaviness. As was the case, H (born in 2001) had covered the mouth of her child out of fear that others in the boarding house would hear the infant's cries and learn that she was unmarried and had a child. The court ruled that H's behaviour arose from "*outdated and shallow thinking*" and thus constituted infanticide (Judgment No. 28/2021/HS-ST of the People's Court of District 7, Ho Chi Minh City, dated December 5th, 2021).

-Special objective status: these external factors dominate the mother's vision and thought processes, ultimately leading to the decision to kill her child. Resolution 04-HDTPTANDTC provided an example of a child born with a congenital disability. Moreover, in practise, the Courts use this sign most frequently in cases where the mother is unable to raise her child due to difficult economic circumstances, which leads to infanticide, such as the case where L gave birth to a child but was afraid of losing her job if she took maternity leave. Her husband did not take care of the family's living expenses, so he did not have enough financial resources to raise the children (Judgement No. 06/2019/HS-ST dated January 29th, 2019 of People's Court of Pho Yen Township, Thai Nguyen Province).

Depending on the legal perspective of different nations, the unique conditions a mother must meet to commit the crime of infanticide may or may not be specified.

- For governments that do not specify exceptional objective circumstances: the selection of special circumstances does not appear required to express humanitarian policy because the question of the time of infanticide is so narrow. As in the Russian Federation, there is no need to enquire about the circumstances if a woman kills

her newborn during or shortly after birth unless extraordinary conditions apply (Article 106). According to Section 234 of the Norwegian Criminal Code, if a mother commits a felony under Section 233 (murder) against her newborn child within 24 hours, she will be prosecuted criminally for infanticide; it can be found in this country as long as the condition of the time of committing the crime is satisfied within 24 hours of the birth, there is no requirement for the status of the mother, every of her perception is the same.

- For jurisdictions that govern exceptional objective circumstances, there are two models: special circumstances linked to criminal motivations (the objective side of the crime) and special circumstances related to mental condition (the subject of the crime).

+ Special circumstances linked to the objective side of the crime

These regulations take the same approach as Vietnam when determining unusual circumstances from an objective standpoint. The provisions of Section 290 of the Dutch Criminal Code provide that if a mother, out of fear that the birth of a child would be discovered, undertakes an act with the fault of knowingly taking the life of the child during or soon after birth, she is guilty of manslaughter. This provision is comparable to the crime of infanticide due to the pervasive impact of retrograde thought in Vietnam. As a result of concealing the birth of her child, maybe due to an illegitimate child, mothers committing intentional manslaughter in the Netherlands will receive a reduced sentence. On the territory of Taiwan, the Criminal Code of the People's Republic of China says that special circumstances are unavoidable circumstances that compel the mother to unavoidably choose to murder her newborn baby during or immediately

after birth (Article 274).

+ Special circumstances linked to the subject of the crime

This is the model most generally adopted by nations; most nations regard mental problems and mental instability owing to the effects of delivery as grounds for forcing the mother into unique conditions to kill her own child, which should be treated more leniently than regular murder.

For the case where the child is killed at any time from birth to the end of 28 days of age, the Criminal Code of the Russian Federation provides two situations on the mother's psychophysiology to form special circumstances, they are:

- In the state of mentally traumatizing, mentally traumatizing can occur both before and after childbirth, which are situations affecting the mother's psyche such as: lack of means of living, affected by others by giving birth out of wedlock, children born as result of rape, etc., these cases are quite similar to the special circumstances of Vietnam, but psychological factors are emphasised more here;

- According to clause 1 of Article 21 of the Criminal Code of the Russian Federation, a person without criminal capacity is a person who, as a result of a chronic mental disorder, temporary mental disorder, intellectual disability, or other neurological diseases, is unable to perceive or control behaviour at the time of committing a crime; in this case, there is no criminal responsibility. Article 22 specifies the mental disease that does not yet render a person incapable of criminal responsibility. Due to the mental disorder disease, the offender is only partially conscious of or in control of a portion of his or her unlawful conduct (clause 1). This

does not exempt the offender from criminal responsibility and is considered when determining punishments (clause 2). Through comparison, it can be seen that this state of mental disorder is comparable to the extenuating circumstance "an offender is a person with a disease of limited cognitive ability or the ability to control his or her behaviour" (point q, clause 1, Article 51 of the Criminal Code 2015), as both are not yet capable of criminal responsibility and are caused by an illness (mental disorder), limiting the ability to perceive or control behavior.

The typical legal framework for infanticide based on the mental state of the mother is found in Britain, where Section 1 of the Infanticide Act of 1938 provides for two cases in which the balance of her mind was disturbed: (i) because of her not having fully recovered from the effect of giving birth to child, or (ii) by reason of the effect of lactation consequent upon the birth of the child. Section 233 of the Canadian Criminal Code provides the same justifications as its British counterpart. In nations with a common law tradition, such as Britain, it is very simple to prove that the mother's mental state was disturbed. Unlike many other jurisdictions, Britain does not have a provision for non-specific criminal capacity, i.e. insanity caused by mental illness. However, if you want to invoke mental illness to be acquitted, British law is based on the M'Naghten rule, which states that a person can be insane if, at the time of the crime, they were in a state of mental illness and did not know the nature and extent of the behaviour they performed (Kreutzer et al, 2011, p. 1501), and before being proven, each person is presumed to be mentally healthy. Thus, establishing that a mentally ill individual is exempt from criminal culpability in Britain is difficult, particularly for a mother who

murdered her newborn child; hence, this crime regulation was designed to decrease the burden of proof.

The advantage of this provision is that it is only necessary to prove a psychological disturbance and not a psychosis that prevented the mother from comprehending the nature of the act of killing her child because "*When a woman does away with her infant, everyone assumes, on slight evidence, that she was mentally unbalanced because of the consequences of childbirth*" (Baker, 2015, para 31-033). Hence, the legislation above is vastly different from those in other nations, such as Vietnam, that clearly govern the state of incapacity for criminal culpability. By establishing a cause-and-effect relationship between abnormal psychological status and delivery, regulating psychological status in other nations frequently finds common ground. As Article 123 of the Brazilian Criminal Code says, due to the influence of the state after delivery, or as Article 116 of the Swiss Criminal Code acknowledges, the effect of childbirth leading to the mother's act of infanticide is also recognised.

3.2.4 The relationship between infanticide and some other crimes

In addition to the provision on infanticide in the Criminal Code of 2015, Vietnamese legislators split the act of abandoning a newborn child into a separate felony. The two crimes are fundamentally distinct regarding the behaviour and phases of commission. The crime of abandoning a newborn child is simply reflected in the act of dumping the child. Still, the crime of infanticide commits acts including actions (stabbing, smothering, strangling, drowning, etc.) or inactions (not feeding the baby, leaving the baby alone,

etc.) as varied as murder. While the resulting death of a child in infanticide is a factor in determining whether the crime has been committed, if the mother has done enough to kill the child, but for some reason, the child is not restrained, the mother is still prosecuted for this crime. Vice versa, while the results of the child's death are the constitutive elements of the crime of abandoning the newborn, if the discarded child is still alive, the mother is not guilty. Section 244 of the Norwegian Criminal Code states that a woman's abandonment of her newborn within 24 hours will be penalised less severely than infanticide; if the abandonment does not result in the child's death or serious injury, the mother may be unpunished.

Life and health are frequently related in some way, and the act of violating life has unquestionably violated health, while the violation of health could constitute a life-threatening risk. In Vietnam, the law only specifies that a mother may kill her newborn child in exceptional circumstances. Still, there are no instances in which a mother in the same circumstances wilfully injures or affects the health of her newborn child. If a mother undertakes an act intending to injure or harm her child's health, she will be punished for criminal culpability, just like any other subject. This is also the norm in the legislation of other nations, including Britain (Baker, 2015, para 31-033). However, there are also countries where the intentional injury of a mother to her newborn child should be mitigated in the same way that the law mitigates the act of murder. Article 200 of the Romanian Criminal Code describes the crime of "killing and harming of a newly-born baby by their mother" clause 2 of this article provides for acts of harming a newborn baby if the mother, due to a mental

disorder, committed the crimes of battery and other acts of violence (Article 193), bodily harm (Article 194), battery and bodily harm causing death (Article 195) to a newborn within 24 hours will be prosecuted on a lesser charge.

3.3 Some deficiencies and recommendations to enhance Vietnamese legislation

From investigation and comparison of the key components of the rules on the crime of infanticide in Vietnam and other countries and areas of the globe, it is evident that the provisions of Vietnamese legislation on the crime of infanticide still have deficiencies that need to be rectified as follows:

3.3.1 Regarding the time to commit infanticide

In accordance with current Vietnamese law, infanticide is defined as the killing of a child born alive within the first seven days of life. When it comes to including the period of birth, this rule differs from those of several countries around the globe. To be consistent with current Vietnamese and international perspectives on the right to human life, however, the clock should begin ticking when the child is born alive. Determining the period at which a crime is committed, even during birth, may cause various complications and legal issues, such as the rights of foetuses and expectant mothers. To improve the rule of law applies not only to the application of the crime of infanticide but also to related legal issues, Vietnamese law must provide a clear explanation of birth and survival, i.e., what factors determine whether a child born alive becomes the object of the crime. This provision of the United States Code can be cited to this end (such as inheritance).

In addition, the maximum age at which a child can be deemed a newborn should be reassessed, despite the fact that the provision of 7 days of age, according to the perinatal period, is relatively medically justifiable. Yet, there are still variables that need to be redefined. The term "newborn" is linguistically similar to the term "infant", so inconsistencies will result if there is a variation in the connotation of these two terms. Furthermore, both Vietnamese and Russian medical communities concur that the neonatal period spans the first 28 days of life (Tra, 2006, p. 5). Moreover, a severe depressive episode with a perinatal period beginning would be comparable to an episode during pregnancy or within four weeks of birth (Serati et al., 2022, p. 397). In medical and linguistic terms, this demonstrates that the Vietnamese regulation of 7 days of age lacks scientific objectivity and is mostly subjective. Following Russian Federation law, scientific and practical standards must specify that a newborn baby is a child from birth until 28 days of age.

3.3.2 Regarding the accomplice being charged with the same crime as the special subject

Unlike other legal regulations on special subjects, such as that of the crime of embezzlement requires the person to have a position, the crime of infanticide, which is a mitigating constitutive norm, was born to target the mother, the subject fell into special circumstances, so the state's humanitarian policy should only be applied to the offender as the mother. In contrast, other participants in the practice, organization, instigator and helper should be handled in a more deterrent manner, so they should be more differentiated criminal responsibility. Through comparison with two countries, the Russian Federation and

Italy, it can be seen that the regulation that holds accomplices to be criminally liable for murder is not really appropriate because it is similar to the law of the Russian Federation, which states that accomplices who are examined for criminal liability for the crime of murder must first fall under the aggravating circumstance of homicide involving a victim under the age of 16 (point b, clause 1, Article 123 of the 2015 Criminal Code) with a penalty of at least 12 years in prison and the maximum death penalty, such a provision is too heavy compared to reality.

Besides, the regulation of committing two different crimes will break the accompaniment regime, because this is no longer a joint crime committed together. Therefore, to ensure more harmony, adopting the Italian legislative method is recommended. Although the crime is the same, there are different punishments for the mother - the special subject - and other accomplices. This regulation not only ensures the application of leniency to the right subjects and the differentiation of criminal responsibility but also does not violate the theory of accomplices in Vietnamese criminal law. The punishment level imposed on the accomplice in this instance does not need to be excessively severe; however, it is required to eliminate the framing of homicide under 16 years of age, followed by a basic penalty frame without aggravating conditions in clause 2 of Article 123 of the Criminal Code for 2015 is selected.

3.3.3 Regarding regulations on special circumstances of mothers

Two factors necessitating the creation of an exceptional circumstance are the pervasive impact of regressive ideology and the fact that the mother who murders her newborn child under Vietnamese

criminal law does not fit the contemporary social context. In a civilised and modern society, things that are regressive and retard the progress of society must be eradicated and considered an enemy of Vietnam's cultural and social base in the new era. The fact that criminal law continues to be based on antiquated principles provides an ideal ground for propagating these notions. As previously discussed, the mother's special circumstance is determined arbitrarily. In many cases, even though the offender is young and highly educated, their infanticide of fear of ridicule is attributable to the case's heavy influence of backward thinking is illogical.

The idea of sexual selection is no longer plausible in modern times because, unlike other animals, people no longer struggle against the rigours of nature to benefit from offspring. During the time of the moralist Kant, society valued honour and judged a woman's reputation by her illegitimate child; at that time, an illegitimate child was considered illegal and women were permitted to kill that humiliation in order to achieve "the state of nature"; however, all of this only existed during that historical period, and now that moral values have changed, it is no longer appropriate to view women in this manner. The term "the state of nature" is no longer relevant.

Only a psychophysiological disorder or disease can be the unique scenario that leads a woman to murder her newborn child. Infanticide is frequently associated with postpartum psychotic episodes, characterised by command hallucinations to kill the child or delusions that demons possess the infant, according to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, DSM-5*. However, psychotic symptoms may also occur during severe mood episodes after birth without

such specific delusions or hallucinations (American Psychiatric, 2013, p. 153). In Vietnam, the rate of mental illnesses, including postpartum depression, is 19.8%, which is 13% higher than the average rate in the World Health Organization study (WHO) (Huong, 2018, p. 51-52).

Through contrast, it is evident that the British legal system raises the issue of mentally ill individuals in order to ease the procedure for proving a person lacks criminal ability. Vietnam, which has a clear definition of criminal responsibility, will not require this. According to the laws of the Russian Federation, the situation of psychological trauma does not make much sense, since it is merely a variant of the current Vietnamese law. The regulations concern mental diseases but not criminal responsibility, which has numerous application benefits. As analysed, this case is similar to the extenuating circumstance of a person suffering from a disease that limits cognitive ability or the ability to control behaviour. The first positive aspect is that this is not a new term in the law, avoiding the controversy when defining a "mental disorder"; the second positive aspect is that this regulation can cover the fact that a mother's illness (mental disorder) affects her ability to know that killing her child is wrong. In addition to learning, it is required to establish that this mental disease must be associated with birthing; otherwise, this is not the case.

In addition, the penalty level must be modified to account for new unique conditions. In this scenario, the British precedent may influence the punishment for the offence of causing death inadvertently. The new punishment is non-incarceration for up to three years or a prison sentence between 01 and 05 years (as provided in clause 1, Article 128 of the

2015 Criminal Code).

3.3.4 Regarding the lack of regulations on acts of intentionally causing injury or harm to the health of a mother towards her newborn child

The fact that the law only applies a mitigating sentence structure to a mother who murders her newborn child while ignoring other offences is a grave mistake. As there is a close relationship between murder (infringement of life) and the intentional cause of injury or harm to health (infringement of health), it is inappropriate for legislators to impose compassionate punishments for murder while ignoring other crimes. Moreover, if a change in the mother's special circumstances results from a mental disease, both the murder of the newborn and the intentional infliction of pain or harm to the newborn's health should be treated equally as crimes. Acknowledging the advancement of Romanian criminal law by giving the same and more lenient rules for acts of harming and murdering a baby, demonstrating legislative technique and legal uniformity. For this regulation, fine level, to ensure a lesser penalty than that of infanticide, the new regulation can apply the penalty level from the lowest to the highest penalty for the crime of unintentionally causing injury or causing harm to other people's health as prescribed in Article 138 of the Criminal Code, shall be subject to non-custodial reform for up to 03 years or a prison term between 01 and 03 years.

Applying the recommendations to change and supplement the provisions of Article 124 into "crime of killing or intentionally inflicting injury or harm to the health of a newborn child" and separating the crime of abandoning a newborn into a separate thing following the aforementioned analysis.

"Article 124. crime of killing or intentionally inflicting injury or harm to the health of a newborn child

- 1. Any mother who murders her child within 28 days of birth while suffering from an illness that impairs her cognitive or behavioural control owing to the effects of childbirth shall be sentenced to non-custodial reform for up to 03 years, imprisonment from 01 up to 05 years, or both. The person who assists the mother in committing this offence shall be penalized in accordance with clause 2 of Article 123 of this Code.*
- 2. Any mother who commits the act as prescribed in Article 134 of this Code to her child within 28 days of birth while suffering from an illness that impairs her cognitive or behavioural control owing to the effects of childbirth shall be sentenced to non-custodial reform for up to 03 years, imprisonment from 01 up to 03 years."*

4. Conclusion

A high risk exists for newborns and infants younger than one week to be murdered by their mothers (Cossins, 2015, p. 173). This terrible truth has occurred in practically every country in the globe; a newborn baby is born extremely young and has no survival experience; what they need is love, but the mother, who is closest to the infant in its early years, is the primary source of love and care. But, due of this proximity, the only person who can hurt and kill a vulnerable youngster is their mother. The law defends the rights of helpless children, but it also takes into account the mother's circumstances when she commits a crime. Criminal law is responsible for balancing the interests of both parties with a low degree of culpability since, whenever a case of infanticide happens, in addition to the death of the

victim, the offender's punishment impacts the psychology of the rest of society. Infanticide is a crime, and because it is a crime, it can only be accepted in sympathetic circumstances. Due to the growth of society, many negative aspects that influenced people's conceptions and thoughts have gradually faded into history. Infanticide is not yet a crime that the law must abolish; rather, it must be amended and improved, as the ultimate priority of the criminal law is to limit and work towards its abolition.

REFERENCES

- [1] Bawa, K., and Williams, C. A. 2018. Technology and organizational culture: A review and agenda for future research. *Journal of Business Research*, 88, 28-37.
- [2] Berger, I. E. 2018. Digital transformation and changes in organizational culture: A review. *Journal of Organizational Change Management*, 31(4), 753-761.
- [3] Byun, J., and Park, Y. J. 2020. The impact of digital transformation on organizational culture: A literature review. *Sustainability*, 12(19), 8203.
- [4] Clegg, S., and Kornberger, M. 2019. Managing and organizing in the age of digitalization. *Journal of Management Studies*, 56(1), 1-8.
- [5] Davenport, T. H. 2014. Management 2.0: The new language of leadership. *Harvard Business Review*, 92(1/2), 44-60.
- [6] Ertmer, P. A., and Ottenbreit-Leftwich, A. T. 2010. Teacher technology change: How knowledge, confidence, beliefs, and culture intersect. *Journal of Research on Technology in Education*, 42(3), 255-284.
- [7] Jarvenpaa, S. L., and Lang, K. R. 2018. Managing the paradoxes of digital transformation. *MIT Sloan Management Review*, 59(3), 13-16.
- [8] Lai, Y. C. 2018. Digital transformation and organizational culture: The perspective of organizational culture evolution. *The Journal of Management Development*, 37(10), 816-827.
- [9] Lee, K., and Lee, Y. 2018. A review of the influence of digital transformation on organizational culture: Insights from global companies. *Asia Pacific Journal of Management*, 35(2), 441-463.
- [10] Stieger, D., and Van Dick, R. 2019. Digitalization and organizational culture: A comparative analysis. *Journal of Business and Psychology*, 34(1), 1-11.



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