

‘It is impossible to judge the extent to which the crime is prevalent’: Infanticide and the law in India, 1870-1926

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Abstract [up to 150 words]: This article examines colonial debates over infanticide in late nineteenth- and early twentieth-century India, including the question of whether new legislation should be introduced to target the crime. Such debates were complicated by Britain’s colonial obsession with specifically eradicating *female* infanticide, seen as a core element of the so-called ‘civilizing mission’, and the reluctance of authorities to acknowledge that in many cases of Indian child homicide, the experiences of single or widowed women facing an unwanted pregnancy had parallels with infanticide cases that were prosecuted in England and Wales. Drawing in particular on India Office records, the article demonstrates the profound impact of these ongoing tensions and concerns in shaping colonial policy and law. Ultimately, despite a degree of support for such a measure from both indigenous and colonial commentators, this tension made passing an Indian equivalent to the English Infanticide Act 1922 impossible in the interwar period.

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British colonial authorities first recorded concerns about the practice of female infanticide in northern and western India, committed by high-caste members of Hindu *jātis* (a term loosely translatable in several different Indian languages as ‘communities’, including but also going beyond the classic definitions of ‘caste’) such as the Rajputs or the Jadejas, in the late eighteenth century.¹ The British blamed female infanticide on intersecting factors: the extortionate cost of dowries; strict requirements in arranged marriages that prospective partners be of equal rank; the lesser status awarded to women, girls, and the parents of daughters across all stages of the life-cycle; and how these became particularly acute concerns in certain regions for members of specific ethnic groups that adhered to a strict caste structure and tended to emphasize their warrior heritage.² The question of ‘equal rank’ in marriage was especially important, since a high-caste family whose daughter married a man from a lower status background suffered an equivalent diminution of rank. The British did not believe Hindu theology, ethnicity, caste, nor regional attitudes led to the practice of killing daughters in and of themselves, although European commentators during the ‘long nineteenth century’ (1789-1914) commonly asserted that ‘female infanticide is confined, or very nearly confined, to Hindus’.³ For instance, the imperial regime recognized that certain upper-caste groups based in Gujarat, such as the Anavils or Vaniyas, never sanctioned female infanticide, while other Hindu *jātis* of similar rank and influence that also lived in Gujarat or elsewhere in Western India did so.⁴

While the practice was rare in South or East India, some remote tribes in these areas did commit female infanticide – although discussions by missionaries, anthropologists or government agents regarding such regional exceptions emphasized the ‘primitive’ nature of these communities in comparison with other Indian ethnic groups.⁵ Rather than singling out any one motive, just as with discussions of *sati* (widow-burning), a custom primarily associated with Rajputs in northern and northwestern India, British commentators believed

that it was the *combination* of these issues that made female infanticide more likely to occur in northern and western areas such as Rajasthan, Gujarat, and Punjab.⁶ As Anshu Malhotra and Veena Oldenburg have demonstrated, the colonial regime was convinced that these intersecting factors were the root cause of female infanticide in India, even when the authorities dealt with specific instances where Muslims or lower caste Hindus – neither of whom fit into this criteria – were suspected of killing their daughters.⁷ Moreover, both British officials and those outside of the colonial government commenting on infanticide in India during the nineteenth or early twentieth centuries were noticeably more comfortable, and willing to go into much more detail, when such discussions specifically targeted instances of *female* infanticide, as opposed to cases of child homicide where the sex of the infant was entirely irrelevant as a motivation for committing the crime.⁸ Instances of the latter, usually involving Hindu widows already laboring under significant economic and social restrictions because of their civil status, were palpably more uncomfortable for colonial critics. These crimes evoked parallels with the circumstances of infanticide cases in England, where, similarly, the discovery of an illicit pregnancy could spell ruin and the end of coveted ‘respectability’.⁹ As this article demonstrates, colonial administrators’ reluctance to acknowledge such parallels between the situations of unmarried women in colony and metropole charged with infanticide meant that it was substantially harder – and in the end, proved impossible – to either generate significant discussion or to pass laws relating to these cases.

Hindu widows – often relatively young women, due to the prevalence of child marriage – were forbidden by custom from remarrying, with especially strict enforcement of this rule for women from a higher caste background.¹⁰ Few couples defied social expectations in order to remarry until well into the twentieth century, despite legislative reforms such as the Hindu Widow’s Remarriage Act 1856, which theoretically encouraged this prospect.¹¹

Such women were perceived as having been transformed by widowhood into a living wellspring of bad luck. Believed to be responsible for their husband's death, they were expected to eke out a modest existence thereafter, with harsh punishments imposed if they transgressed the strict rules widows were expected to abide by (including restrictions on property rights, clothing, jewelry, and food).¹² Sympathy within indigenous communities for women who broke these rules was often minimal.

Women who came before the courts in India charged with the murder of an illegitimate baby of either sex generated a great deal of anxiety for the colonial government at regular intervals during the late nineteenth and early twentieth centuries, prompting calls for reports of such cases to be closely monitored by the local government.¹³ Yet, as I demonstrate here, the colonial authorities were reluctant to amend the laws relating to general infanticide practices (those regardless of gender), while simultaneously passing and celebrating the success of legislation that concentrated on eliminating the specific practice of *female* infanticide – a crime that could be easily defined as a product of ‘Indian backwardness’, rather than one that had awkward parallels with offences committed in Britain. Moreover, in both instances of suspected female infanticide and cases where Hindu widows killed illegitimate infants of either sex, until the First World War, the press, in public, and individual government officials, behind the scenes, periodically raised concerns that it remained difficult, if not impossible, to accurately determine the extent to which these crimes occurred in British India.¹⁴

Drawing on judicial proceedings and standalone files from the voluminous India Office Records archived at the British Library, this article argues that the slipperiness of colonial representations of ‘Indian infanticide’, and a focus on cases of female infanticide (whether real or imagined) was matched with the colonial state's deep discomfort with those child homicide cases committed by women in India that were instead motivated in part by

shame, fear, and the profound stigma attached to illegitimacy and a loss of ‘honor’ or respectability. India Office Records can be highly idiosyncratic in their contents, as well as vast in terms of the chronological, regional and topical variety of information they cover relating to colonial South Asia.¹⁵ It is seldom clear what prompted the Indian civil service to focus on or omit the details of particular issues, or why bureaucrats included or excluded supporting testimony or documentation.¹⁶ Effectively, these records are results of processes of double (or more) mediation: anonymously preserving distilled fragments of earlier transcription itself pre-edited by colonial correspondents and clerks. Yet, as Durba Ghosh has suggested, ‘incompletely named and renamed subjects have histories that are waiting to be told’.¹⁷

During the 1830s, missionaries and East India Company officials dramatically scaled up efforts to eradicate the practice of female infanticide, which they identified as a core element of the so-called ‘civilizing mission’.¹⁸ In addition to informally pressuring and formally petitioning indigenous leaders, the East India Company adopted more unusual schemes, such as the development of an essay prize awarded for the best creative work by an Indian writer that condemned the killing of daughters.¹⁹ None of these approaches, however, had the desired impact of eliminating the practice of female infanticide, and an effective solution remained elusive. It was not until after the Great Rebellion in 1857 and the subsequent overhaul of the Indian legal system that the government began to pay serious attention to whether ‘the crime should be made a special one’.²⁰ W.R. Moore, an East India Company official who had investigated the extent of female infanticide, recommended this in his posthumously-published report.²¹

One colonial official in northwest India complained to the government in 1861 that schemes setting out formal limits for dowries, previously seen as a key measure in discouraging female infanticide through limiting the expense these *jātis* later incurred in

marrying off daughters, had by now proved ineffectual. As he wrote, ‘With regard to marriage expenditure, I may observe that the scale laid down for Rajpoots (not to speak of other castes) has not been followed and is practically a dead letter’.²² The government also recognized that despite the substantial criminal justice reforms after the passage of the 1860 Indian Penal Code and the creation of the High Courts in 1862, authorities still had difficulty detecting and punishing cases of infanticide.²³ Prior to 1860, criminal as well as civil law cases dealing with Indian or mixed-race subjects fell under the auspices of ‘Anglo-Muhammadan law’, a complicated system that involved combining supposedly ‘authentic’ elements of Islamic law (*sharia*) and English legal principles. British judges administered the system as an act of continuity with the preceding rule of the Mughal Empire, which applied to *all* indigenous subjects regardless of whether they were Muslim, Sikh, or Hindu.²⁴ In practice, despite the avowed intention of maintaining a strong link with preceding Islamic legal principles, the Anglo-Muhammadan system departed from these in a number of ways, most explicitly in its treatment of homicide, which followed much stricter definitions and punishments aligned with English ideas and practices.²⁵ Only with the Indian Penal Code of 1860, first drafted in the 1830s but not passed until the assumption of Crown control after the 1857 Rebellion had been quelled, did substantial legal reforms come about.²⁶ Further amendments to criminal procedure after this date demonstrated vividly what Elizabeth Kolsky has described as ‘the paradox of attempting to create democratic legal institutions in the context of absolute authoritarianism’.²⁷

Under the 1860 Code – just as in the separate legal systems of England, Ireland and Scotland at the time – ‘infanticide’ had no special legal meaning. That is, the killing of an infant was treated as any other homicide.²⁸ This meant that the prisoner was subject to prosecution under section 300 (murder) or, more rarely, under section 299 (culpable homicide) of the Indian Penal Code. One marked difference between the English and

colonial legal systems was in relation to sentencing in murder cases: section 302 allowed for ‘transportation for life’ to replace the mandatory death penalty in all murder convictions if the judge felt that this lesser penalty was more appropriate to the individual circumstances of the case.²⁹ While a sentence of transportation was certainly not a light punishment – indeed, for Hindus, crossing the Bay of Bengal to the penal colony at the Andaman Islands established in 1858 might break caste rules, adding a further spiritual dimension to this – it was nonetheless an alternative to execution.³⁰

There were also deliberate efforts in the framing by British officials of the Indian Penal Code to avoid some of the legal pitfalls that befell child homicide prosecutions in England. To bring a murder charge in India to trial, prosecutors did not have to first demonstrate to the court that the child had been alive and had not died *during* childbirth (something almost impossible to prove without direct witness testimony, and thus usually relying on inference of results from other medico-legal tests).³¹ However, even after these legislative changes, conviction rates for child homicide remained extremely low in late nineteenth-century India: one civil surgeon argued that only 4 percent of infanticide cases from Bengal that came before the courts resulted in a guilty verdict.³²

An additional complicating factor was that such killings were generally carried out immediately after birth, and these crimes were most likely to occur within the confines of the *zenana* (women’s quarters) where men could not go. While the colonial authorities held the men of the family ultimately responsible for deciding the fate of unwelcome daughters, many officials argued that ‘the attendant midwife or nurse; occasionally, also, one of the aged female members of the family [who] performs the horrible and unnatural deed’.³³ The colonial suspicion that indigenous midwives were all too willing to routinely murder infants at the request of a malevolent *paterfamilias* also played into broader concerns and campaigns across British India that stereotyped all such women healers – even the best-intentioned and

most capable – as so ignorant that they were actively dangerous to the women and children they dealt with.³⁴ It also combined with longstanding British fears of poisoning as a crime that made the ‘weak’ dangerous, since officials believed that Indians used the juice of *datura metel* (a very common, and extremely poisonous, flower) as a favored method for disposing of unwanted daughters.³⁵

As Veena Talwar Oldenburg has observed of nineteenth-century British reports on infanticide in the Punjab, ‘women are seldom mentioned, and when they are, they are portrayed with little sympathy as illiterate, superstitious, and overly fecund, with unclean and cruel habits, and submissive to the point of mindlessness.’³⁶ In such instances, colonial authorities were markedly less concerned with prosecuting the women who might have actually carried out the killing than with finding a means to punish the man who had ordered it and deter others from following suit.

The Female Infanticide (Prevention) Act of 1870 was intended to bypass these difficulties, by introducing special legislation to monitor villages and towns where the authorities suspected that Hindu families routinely killed their daughters.³⁷ This allowed for local governments to set up special police forces (funded by a punitive local tax) that would take a regular census of births, deaths, and marriages in the affected districts and fine or imprison those who tried to obstruct or disobey these officers. It also gave the police the right to remove baby girls at risk of harm and neglect from the care of their families.³⁸ Officials could also divert these same taxes, along with a tax on what was seen as ‘excessive’ dowry and wedding costs, into preexisting ‘infanticide funds’ first established in the 1850s. These funds had the intention of supporting schemes to encourage the preservation of infant girls and improve the overall living conditions of the affected communities.³⁹ Even if officials were unable to bring an individual prosecution for murder or culpable homicide, their ability

to monitor villages to determine how many infant girls were in the area made it possible to apply sanctions to areas with suspiciously low numbers.

Crucially, the Act was passed at a time when the colonial regime was increasingly concerned with demarcating the boundaries of ‘caste’ as a means of better understanding and thus governing Indian society. As Arjun Appadurai has demonstrated, the ‘enumerative Raj’ of the late nineteenth and early twentieth century served both justificatory and disciplinary ends: a new emphasis on the quantification and demarcation of specific groups (including women, both as part of caste-specific groups and separately) became an essential aspect of the imperial regime and its control over indigenous subjects.⁴⁰ This concern implicitly tied into the longstanding acknowledgment that it was specific *jātis* in northern and western India, such as the Rajputs, that practiced female infanticide. Understanding this law as part of an increasing focus on caste identity sets the Female Infanticide (Prevention) Act in a continuum with other legislative and policy interventions that stigmatized particular communities in the early 1870s.⁴¹ For example, caste became a major category in the first Indian Census (1871–72).⁴² Significantly, this period also saw the initial stirrings of the ‘martial races’ theory that became ubiquitous by the 1880s, with ‘biological distinctiveness between the powerful, manly Sikh race and the purportedly feeble Hindus and decadent Muslims’ a regular feature of ethnographic and military textbooks.⁴³

However, in practice, caste turned out to be a much more problematic and fragmented category for understanding the lives and beliefs of Indian subjects than the British had hoped.⁴⁴ From early on in the development of the new census, the authorities were forced to acknowledge that only Brahmins (the highest-ranking of the four main Hindu *varnas*, or classic caste groupings) were relatively easy for outsiders to define as a distinct group with conspicuous similarities shared in both North and South India.⁴⁵ Nor, as it turned out, did caste necessarily translate easily into defining the occupation or even resources of a given

kinship group, forcing the colonial regime to reassess assumptions they had made about caste as analogous to European class structures.⁴⁶ Thus, part of the reason the 1870 Act did not fall at the first hurdle was its focus on the *combination* of characteristics associated with the practice of female infanticide, and its application to individual villages or towns within northern and western India. Despite the Act broadly targeting upper-caste Hindu groups in these regions, the authorities acknowledged the specificity of local customs (including whether particular families or communities within a given *jāti* accepted or abhorred the custom of killing daughters) and required that it be enforced in a much more selective manner than other caste-focused legislation.⁴⁷

For the majority of colonial commentators between 1870 and 1900, the Act's efficacy was never in question. For the most part, they understood it as a straightforward success, an 'improving' measure that had eliminated a heinous custom.⁴⁸ Indeed, in January 1900 the Government of Bombay told the Political Agents working in the princely states (ostensibly independent territories outside British rule, but in practice closely monitored, and frequently interfered with by colonial agents) of Kathiawar, Kutch, Palanpur, and Mahi Kantha that there was no further need to keep submitting annual census reports on rates of suspected female infanticide, since the 1870 Act had successfully abolished the practice.⁴⁹ Not everyone was convinced that the Act worked as smoothly as its proponents claimed, however, and concerns remained that complacency regarding its effectiveness might lead to disaster for indigenous girls.⁵⁰ In December 1897, the influential Allahabad-based English newspaper *The Pioneer* reported that in the North-West Provinces that were historically associated with high rates of female infanticide, the law still seemed to be of dubious effect and limited application.⁵¹ This was the latest – and both the bluntest and most expansive – article of several such reports published in the late nineteenth century by *The Pioneer*, the second-oldest English-language newspaper in colonial India. As a conservative title, it was normally

very much in sympathy with the expressed views of the government.⁵² With this in mind, the critical tone of the piece is particularly striking, since it departed so emphatically from the accepted majority opinion (both in and outside government) that the practice of female infanticide had already been dramatically reduced. Far from commending its success in recent years, the article argued the 1870 Act did not go far enough and called for the law to be enforced more extensively across the region:

In respect to infanticide it is obviously absurd to introduce a drastic and strong law unless it is enforced with becoming rigour, but the existing state of affairs could hardly be more unsatisfactory. It is impossible to judge the extent to which the crime is prevalent with any sense of certainty.⁵³

There were also concerns that even in those areas where female infanticide did not seem to be a continuing issue, this custom might recur unless checked. Proposals were made in 1896 to amend the Female Infanticide Act in Bombay Presidency (one of the three centers of colonial power in British India, along with Bengal Presidency and Madras Presidency) to divert money originally saved from ‘infanticide funds’ established in 1873 but that had never been spent to other ends for the overall good of the Presidency, such as public works and sanitation improvements.⁵⁴ These suggestions provoked consternation among some Indian correspondents. These writers, having seen the proposed change in the law reported in the vernacular press, complained to the Government of Bombay that such amendments risked undermining the ‘progress’ of the castes these funds were set up to help.⁵⁵ As one group of male petitioners from the Kadava Patidar caste complained, funds were originally raised from taxing these groups with the specific aim of preventing infanticide and this should remain the key object. They argued that it was essential that any new direction for the funds needed to improve matters for members of the relevant *jātis*, and take into account their current living and working conditions. While none of these letters suggested that female infanticide might

be an ongoing issue, or even that it was likely to recur unless routinely checked, the petitioners felt strongly that these communities should remain the beneficiaries. Schemes designed to help rural cultivators and laborers were of little use, they remarked, to members of castes who were generally based in cities or towns.⁵⁶

When the ruling Council of the Government of Bombay met to consider the new bill that would become the Female Infanticide Prevention (Amendment) Act of 1897, members agreed that any accrued funds should remain within government control, but also confirmed that these would be ‘spent exclusively for the benefit of the classes who have been contributories to them’.⁵⁷ The 1897 Act included specific wording that the money was intended to fund a range of scholarships and book prizes for young men and women in these communities, emphasizing the direct relationship between these funds and the social ‘progress’ the Act was supposed to generate for members of groups previously suspected of endorsing female infanticide.⁵⁸

As an emphatic marker of how successful the government of India believed the 1870 Act to have been, in 1906, it quietly repealed the law, ostensibly on the grounds that it had now successfully eliminated the crime.⁵⁹ An article published in the *Times of India* the following year on the rapid pace of social reforms in Marwar, part of the northwest state of Rajasthan, confidently assured readers that ‘Female infanticide has been put a stop to in Rajputana’.⁶⁰

However, if the 1870 Act had drastically reduced instances of *female* infanticide, it had done nothing at all regarding cases of child murder where it was an illicit pregnancy, not the sex of the infant, that had been the primary motivation for the killing.⁶¹ As the leading medical jurisprudence textbook of the 1890s remarked, ‘the latter offence still prevails to a very large extent, and will probably continue as long as there exists a prohibition against the re-marriage of widows’.⁶² Concrete figures for the number of women brought before the

courts for infanticide where the sex of the infant had been irrelevant to committing the crime remained hazy, but colonial officials widely accepted this happened with regularity in the late nineteenth and early twentieth centuries, hence the oft-repeated if somewhat generic description that usually accompanied reports of it in newspapers or government papers as ‘common’. Some colonial commentators viewed such cases with a substantial degree of sympathy: the educational and penal reformer Mary Carpenter described women imprisoned for infanticide in Calcutta Jail that she met during her tour of India in the 1860s as not having ‘acted from premeditated wickedness, but rather from sudden impulse caused by great provocation’.⁶³ Carpenter’s observation was remarkably similar to a number of critiques of the judicial treatment of infanticide made in England during the 1860s and 1870s, which argued that women were unfairly penalized by the double standard of sexual morality and stressed the economic and reputational damage that the mothers of illegitimate children faced as a result.⁶⁴

However, the colonial regime rejected outright any suggestions that the Indian Penal Code needed further amendment to better deal with such cases. For example, Sir Madava Rao, a leading Indian civil servant, wrote an acclaimed article for the *Journal of the National Indian Association* in 1876 that recommended abolishing the mandatory sentences of death or transportation for life, taking into account the special strictures facing Hindu widows.⁶⁵ Rao argued that replacing these options for judges with a sentence of seven years’ imprisonment was still a sufficient deterrent that would more accurately and fairly punish what he acknowledged to be ‘a great offence’. Yet the ‘offence’ had exceptional mitigating circumstances, where ‘the woman *more* dreads the shame of being detected in her frailty, than she dreads the pain of sacrificing her own child, plus the risk she runs of being herself hanged’.⁶⁶ As Padma Anagol has shown, although commentators in both Britain and India approvingly cited Rao’s recommended amendments as a welcome solution to the imperial

‘infanticide problem’ as late as the 1890s, the colonial government refused to countenance introducing new legislation.⁶⁷

Far better, the authorities agreed, was to standardize reviewing each woman’s case following her conviction for murder, and then have the provincial government determine whether to confirm a sentence of transportation for life (or, in very rare instances, the death penalty) or discreetly reduce it to a term of imprisonment.⁶⁸ The civil service emphasized the importance of this review process, established in 1879 as government policy for all cases in India where women were convicted of killing their children, at periodic intervals throughout the late nineteenth and early twentieth centuries, suggesting that officials did not always closely follow the rules. In August 1913, for instance, a circular to all District and Sessions Judges in the United Provinces reminded them of the requirement that they needed to send details of *all* infanticide convictions – involving children of married women as well as illegitimate child victims – for government review so that ‘these cases not be lost sight of’.⁶⁹

Ironically, in view of the reluctance of most British commentators to acknowledge parallels between infanticide cases in England and India, this practice mimicked the insistence of the Home Office between the 1860s and the early 1920s that all cases where English and Welsh women were convicted of murdering their infants (and thus automatically sentenced to death) should always be reviewed, but that any formal change in the law was unnecessary. The Home Office invariably commuted such cases to a sentence that was nominally ‘penal servitude for life.’ By the 1920s, nonetheless, the time actually served in prison might be as short as a year or two. Of course, the likelihood of such dramatic sentence reduction was rarely obvious to those outside the Home Office or penal system, and prisoners never knew this until their release was imminent.⁷⁰ As far as the authorities were concerned, the practice of automatic post-sentence review by the civil service in both India and England

of all cases where women were convicted of murdering their infants provided an excellent safeguard against injustice, and shut down the question of further legal reforms.

However, in 1925, the trial and appeal of Sundrabai kom Sarwottamacharya, a twenty-two-year-old Brahmin widow living in Mysore, forced the imperial regime to engage directly with the question of whether or not such crimes committed in India had any parallel with cases of child homicide in England.⁷¹ There was little indication that her case would prompt such a debate: the circumstances of it were summarized in correspondence between the Government of Bombay and the Government of India, simply (but revealingly) as ‘the common one of an unfortunate Hindu widow giving birth to an illegitimate child and forthwith putting it to death’.⁷² Sent away by her father from their house in Rannebenuru when she became pregnant, Sundrabai had taken refuge at a temple near the railway station in the town of Savanur. Travelers recognized her, however, and notified her father, who subsequently sent a letter with 15 rupees urging her to find a place where she was unknown and no whispers of scandal could reach back to their home.⁷³ Shortly afterwards, she went into labor and killed her daughter: the body was discovered under a nearby hedge covered with a red sari identified as the one Sundrabai had been wearing, and with a strip of the sari material knotted tightly twice around the neck.⁷⁴

Although Sundrabai pleaded guilty to the secondary charge of ‘concealment of birth’ (section 318 of the Indian Penal Code), possibly hoping to escape more severe punishment, she did not confess to the murder.⁷⁵ Her hopes were rapidly dashed when the medical officer who performed a post-mortem on the child testified that the body met the medico-legal criteria for determining live birth, and that the infant had died from strangulation.⁷⁶ Testimony by a physician confirming that the baby was murdered (and not a stillbirth), whether or not it was scientifically accurate, avoided one of the common hurdles faced by prosecutors in both England and India in infanticide trials. Without ‘proof’ of a live birth

authorities were immediately limited to charges of ‘concealing the birth’ even if the body showed marks of extreme violence.

At the trial, the Sessions Judge, and all three of the assessors (Indian officials who sat with the judge to discuss any given case and who made non-binding recommendations regarding the most appropriate verdict) unequivocally agreed that she was guilty of murder.⁷⁷ They sentenced her to transportation for life, subject to the normal review by the provincial government and High Court.⁷⁸ None of this was out of the ordinary for cases of infanticide tried in early twentieth-century India, even if judges might express wildly varying degrees of sympathy (or lack thereof) towards the prisoner before them.⁷⁹

At this point, however, events took an unexpected turn. The Sessions Judge, V.M. Ferrers, wrote explicitly in his report to the government of Bombay that ‘I should myself be glad if any lawful subterfuge could have been found by which the major charge could have been withdrawn’.⁸⁰ Ferrers specifically observed that France, Italy, and Germany had all passed laws that defined infanticide cases as something rather different to ‘normal’ murders and deserving a lesser punishment, while the Indian Penal Code still did not.⁸¹ Indeed, a sizeable number of jurisdictions across the globe made similar distinctions between the judicial treatment of infanticide as a ‘special’ crime and other types of homicide, including Brazil and Argentina: those nations which did not draw such a distinction, such as the United States, were in a relative minority worldwide by the early twentieth century.⁸² Interestingly, Ferrers made no mention here of the very recent change in English law along similar lines.⁸³ The abrupt implementation in England, Wales, and Northern Ireland of the Infanticide Act 1922 allowed any woman found guilty of killing her ‘newly born’ child while in a state of postpartum mental upset to be treated as guilty of manslaughter (and thus sentenced to a term of imprisonment) rather than murder, a reform which avoided the spectacle and cruelty of passing a mandatory death sentence in court that the authorities – but not the prisoner – knew

was unlikely to actually be carried out.⁸⁴ In finally making this change – an amendment first proposed in England during the 1860s – and stressing in the wording of the 1922 Act a close link between infanticide and postpartum mental illness, the English law now offered what was felt to be a substantially fairer and more just way of dealing with these defendants, as well as being brought more closely into line with established legal practices in Europe and Latin America.⁸⁵ If sentencing had been left to his own discretion, Ferrers complained, ‘I should have thought imprisonment for two years to be punishment enough’.⁸⁶

When Sundrabai appealed against her sentence through the Bombay High Court, the judges dismissed the appeal but also immediately agreed that her sentence should be reduced from transportation to two years imprisonment, and strongly endorsed Ferrers’ call for legislative reform.⁸⁷ This matter was pressing, the judges argued, given not just the frequency with which such cases came before the courts, but because ‘England has now fallen into line with other countries in providing a separate punishment for infanticide’.⁸⁸ Given that the need for similar legislation had now been proposed by three different judges in Bombay Presidency, the Government of India should consider ‘whether the time has not come to make special provision for such offences in the Indian Penal Code’.⁸⁹

Judges Mirza and Perceval of the Bombay High Court had assumed that their colleagues both on the bench and in the government would widely accept their view that the law was overdue for amendment, grounded in common sense and taking into account recent legislative developments in England, as the best solution to perennial concerns regarding infanticide. In fact, attitudes among the ranks of the legal profession and civil service fell into two starkly divided and opposing camps, as the government of India discovered when it requested expert opinions from across the country.⁹⁰ Both those correspondents advocating reform and those urging the government to maintain current practice included Indian as well as English civil servants and lawyers or judges, though it is difficult to estimate the extent to

which the government truly solicited the views of the former. The Government of India often preselected 'suitable' commentators with experience in relevant legal and administrative matters. Moreover, there simply were not many Indian men working in either profession during the early twentieth century.⁹¹ Many respondents actively favored reform, such as G.C. Sankey, the District Judge at Myemsingh, who believed new legislation 'is urgently required. I am sure that at any rate in Bengal, no evil consequences need be anticipated from the change'.⁹² Some of the proposed amendments were radical in the extreme: the Sessions Judge of Ahmednagar, F.W. Allison, actually went as far as to argue that infanticide cases where the perpetrator was a Hindu widow or unmarried Indian woman should have a *maximum* sentence of two years imprisonment, given the penalties and ostracism any such woman would face for having an illegitimate child.⁹³ Allison noted that he had dealt with four such convictions in the preceding three years, and that in each case the appeals court had commuted the sentence of transportation for life to one or two years 'rigorous imprisonment,' roughly equivalent to a sentence of 'imprisonment with hard labor' in the English context.⁹⁴ Given this, he believed that it was deeply unjust to continue handing down sentences that were unlikely to ever be carried out: 'I have great sympathy for a woman in this position'.⁹⁵ Anyone concerned that changing the law might lead to the creeping return of female infanticide as a custom in the northwest, suggested E. Clements, the District Judge of Ahmedabad, could be reassured that in areas where it became necessary, the government could revive the 1870 Female Infanticide (Prevention) Act until the rates of surviving infant girls improved once more.⁹⁶

Conversely, in the view of L. Stuart, Chief Justice of the United Provinces, any change in the law on infanticide in India would have disastrous consequences. This likely carried significant weight with the Government of India, because the United Provinces, formed in 1902, were the successor to the administrative region formerly designated as the

North-Western Provinces, and thus one of the areas that had in the past been strongly associated with the practice of female infanticide. Stuart objected vehemently to any change in the law because he felt such cases were already liable to generate exceedingly (and inappropriately) sentimental responses from the general public and even the legal profession, regardless of whether or not the woman deserved compassion. He argued that

While it is perfectly true that in many cases considerable sympathy ought to be extended to a young woman who is driven by shame or ill-treatment towards the murder of her child, there are other cases in which there is no cause for sympathy. I have seen cases, both in England [and] in India, where a girl deliberately murdered her illegitimate child because she found its existence a nuisance and because her obligations in respect of the maintenance of the child interfered with the course of her life.⁹⁷

While admitting here that *some* infanticide cases in both countries resulted from shame, despair, or the cruelty of others, Stuart's comments also invoked the specter of the feckless 'modern girl,' who had indulged in an immoral lifestyle, rejected properly 'feminine' expectations, and was unwilling to either take responsibility for her actions or undertake the hard work necessary to support and care for an infant, given the additional hurdles that mothers of illegitimate children invariably faced finding work.⁹⁸

Stuart was not alone in his opposition: approximately half of those lawyers, judges and civil servants surveyed advocated there should be no change from current practice.⁹⁹ The Commissioner of Burdwan Division, A.W. Cook, felt that the review process instituted in 1879 already allowed for mitigation, and that any alteration 'would probably lead to a large increase in such cases'.¹⁰⁰ The District Judge of Faridpur likewise complained that one side effect from any of the proposed reforms would undoubtedly be to 'give rise to the idea that the State have ceased to regard infanticides as a crime of the gravest possible character'.¹⁰¹

A few commentators put forward a ‘median view’ of proposed reforms that took into account both anxieties about ‘traditional’ Indian social and religious customs and ‘caste pride’ that had led to infanticide in the past, and the danger that the courts would be unable to try some child murder cases fairly without further amendment of the law. The pioneering female lawyer Cornelia Sorabji suggested to the Government of Bengal that India might benefit from introducing a closely-aligned version of the recent English Infanticide Act of 1922, but she was emphatic that any change strictly refer to ensuring fair treatment by the courts and the medical profession, the latter ‘if the mother has really committed the Crime [sic] during the period of mental derangement after childbirth’.¹⁰² Reflecting Sorabji’s combination of staunchly pro-imperial views with her deep commitment to improving Indian women’s rights and social position, this proposed compromise was never likely to find favor with either the ‘reform’ or ‘retain’ camps.¹⁰³

In light of the authorities’ longstanding reluctance to change existing practice, the 1926 circular letter that requested opinions on law reform opened by making reference to two key factors that demonstrated, in the view of the government, that there was no need for any legislative amendments.¹⁰⁴ The first concern was that any change would undermine previous social reform efforts to safeguard infant girls, since ‘the practice of female infanticide has existed in India up to any rate comparatively recent years’ and this had ‘required very prolonged and strenuous efforts on the part of the British government to reduce it to its present dimensions’.¹⁰⁵ The authorities feared that any proposed amendment to the law would create the false impression that the government was not taking child homicide as seriously as it had been in previous decades. The second point stressed was that section 302 of the Indian Penal Code already allowed judges to reduce sentences from the death penalty to transportation for life. On this basis, the government believed comparisons drawn by critics with the experiences of English and Welsh women convicted of child murder before 1922

were inaccurate, since Indian women found guilty of infanticide seldom had sentence of death pronounced by the courts.¹⁰⁶ Combined with the practice of post-sentencing case review in all instances where women were convicted of child murder, the government argued that the potential for miscarriages of justice was radically lower in India than it had ever been in England and Wales. Several judges and civil servants who wrote back to the government made similar points.¹⁰⁷ Since even those in favor of reform could not necessarily agree on the best option for improving current practice, the Government of Bombay observed, ‘it seems evident that the advantage to be expected from any change in the law is not sufficient to justify the risks which would arise from it’.¹⁰⁸ Given this, and that a similar divergence of opinion had stalled any change to the law on infanticide in England for several decades, it was perhaps inevitable that the Government of India decided to err on the side of caution.¹⁰⁹ In August 1926, the Governor in Council concluded that arrangements for dealing with women convicted of infanticide should remain unchanged.¹¹⁰

Conclusions

In August 1929, the *Times of India* reported the joint conviction of two sisters from a wealthy Muslim family in the princely state of Kurundwad Senior for infanticide.¹¹¹ In this case, a widow named Sugrabi whose husband had died seven years earlier had secretly given birth to an illegitimate child. She and her sister Sattubi had strangled the boy immediately after he was born, then hid the body in a metal box, which they left in a railway carriage heading towards the city of Belgaum. Passengers on the train ‘noticed an offensive smell’, leading to discovery of the body, and investigations promptly led to the arrest of the two women. Following their conviction for murder, and on the recommendation of the presiding judge to the Government of Bombay, the sentences were commuted from transportation for life to just one year’s imprisonment for Sugrabi, and six months imprisonment for her

sister.¹¹² Although in this case the perpetrator was a Muslim widow rather than a Hindu one, in seemingly all other respects, this fit with the pattern established for dealing with women who killed their infants that had been standardized by 1879 and emphatically reaffirmed in 1926. While the trial itself was intended to act as a warning and a deterrent, the post-sentence review process acknowledged that Indian women who became pregnant outside of marriage – regardless of whether this conception was the result of a consensual relationship or rape – faced profound hardship and ostracism from their communities, and took into account the sympathy that many people felt for such desperate women.

The British obsession with the practice of female infanticide, a crime frequently described as ‘special to the East’, was never matched by concern for those cases of child homicide that drew uncomfortable parallels with infanticide committed ‘back home’.¹¹³ Discussions of female infanticide practiced in northern and western India by *jātis* such as the Rajputs or Jadejas generated considerable energy during the nineteenth century, including the passage of controversial legislation. While eliminating the former could be comfortably held up as a marker of the ‘civilizing mission’, another way of demonstrating to the world the urgent necessity of British rule on the subcontinent and the impossibility of Indians being allowed to govern themselves, the latter was significantly more problematic to deal with for the empire, particularly as the strength of the Indian nationalist movement increased dramatically during the 1920s and 1930s.¹¹⁴ ‘Caste pride’ had no home-grown equivalent, but the close association of chastity with female honor, and the heavy social and economic penalties faced by women who had illegitimate children both were shared in Britain and India during the late nineteenth and early twentieth century. Addressing the root causes of these problems in both countries would have necessitated a radical set of changes – not simply legislative, but in cultural and social mores that shifted away from the double standard of sexual morality that disproportionately burdened women in India and Britain. We can ascribe

the ongoing reluctance of the colonial authorities to address the treatment of those infanticide cases where the sex of the infant had not been relevant to commission of the crime between 1870 and 1926 as much to the scale of changes that this would have required, as to the disquiet that fully acknowledging these parallels would have generated about similarities between the inhabitants and attitudes of colony and metropole.

I am grateful to Cassia Roth, Diana Paton, Orisheweyimi Olugbo, and the anonymous reviewers for their helpful suggestions regarding this article.

¹ Lalita Panigrahi, *British Social Policy and Female Infanticide in India* (New Delhi: Munishiram Manoharlal, 1972); Rashmi Dube Bhatnagar, Renu Dube & Reena Dube, *Female Infanticide in India: A Feminist Cultural History* (Albany: State University of New York Press, 2005); Daniel J.R. Grey, 'Creating the "Problem Hindu": Sati, Thuggee and Female Infanticide in India, 1800-60', *Gender & History* 25, no. 3 (2013): 498-510.

² On colonial representations of Rajput culture, see Malavika Kasturi, *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-Century North India* (New Delhi: Oxford University Press, 2002).

³ Sir D.F. McLeod, *Minute on the Suppression of Infanticide* (Murree: NP, 1870), 1.

⁴ L.S. Vishwanath, *Female Infanticide and Social Structure: A Socio-Historical Study in Western and Northern India* (New Delhi: Hindustan Publishing Corporation, 2000), 119.

⁵ Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton, NJ: Princeton University Press, 2001), 173.

⁶ On *sati*, see Andrea Major, *Pious Flames: European Encounters with Sati, 1500-1830* (New Delhi: Oxford University Press, 2006); and Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998).

⁷ Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime* (New Delhi: Oxford University Press, 2002), 6; Anshu Malhotra, 'Shameful Continuities: The Practice of Female Infanticide in Colonial Punjab', in *Sikhism and Women*, ed. Doris Jakobsh (New Delhi: Oxford University Press, 2010), 85.

⁸ Daniel J.R. Grey, 'Gender, Religion, and Infanticide in Colonial India, 1870-1906', *Victorian Review* 37, no. 2 (2011): 107-120.

⁹ Daniel J.R. Grey, "'Who's Really Wicked and Immoral, Women or Men?': Uneasy Classifications, Hindu Gender Roles and Infanticide in Late Nineteenth-Century India', in *Transnational Penal Cultures: New Perspectives on Discipline, Punishment and Desistance*, eds. Vivien Miller and James Campbell (New York: Routledge, 2014), 36-50. On unmarried motherhood in England during the period of this article see Ginger S. Frost, *Illegitimacy in English Law and Society, 1860-1930* (Manchester: Manchester University Press, 2016).

¹⁰ For context see Ishita Pande, *Sex, Law and the Politics of Age: Child Marriage in India, 1891-1937* (Cambridge: Cambridge University Press, 2020).

¹¹ See Jyoti Atwal, *Real and Imagined Widows: Gender Relations in Colonial North India* (Delhi: Primus Books, 2016); and Mytheli Sreenivas, *Wives, Widows, and Concubines: The Conjugal Family Ideal in Colonial India* (Bloomington, IN: Indiana University Press, 2008).

¹² Geraldine Forbes, *Women in Modern India* (Cambridge: Cambridge University Press, 1996), 21-23.

¹³ Padma Anagol, 'The Emergence of the Female Criminal in India: Infanticide and Survival Under the Raj', *History Workshop Journal*, 53 (2002): 73-93; Kamala Visweswaran, "'My words were not cared for": Customary law, criminality and the "woman question" in late colonial India', *Contributions to Indian Sociology* 52, no. 2 (2018): 156-185.

¹⁴ Grey, 'Gender, Religion and Infanticide'.

¹⁵ See Arnold P. Kaminsky, *The India Office, 1880-1910* (London: Mansell, 1986); Martin Moir, *A General Guide to the India Office Records* (London: The British Library, 1988).

¹⁶ On politics and practices of colonial record-keeping, see Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009).

¹⁷ Durba Ghosh, 'Decoding the Nameless: Gender, Subjectivity and Historical Methodologies in Reading the Archives of Colonial India', in *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660-1840*, ed. Kathleen Wilson (Cambridge: Cambridge University Press, 2004), 316.

- ¹⁸ J. Peggs, *India's Cries to British Humanity, Relative to the Suttee, Infanticide, British Connexion with Idolatry, Ghaut Murders and Slavery in India, to which is added Humane Hints for the Melioration of State of Society in British India*, 2nd ed. (London: Seeley and Son, 1830), 113-211.
- ¹⁹ Padma Anagol, 'Languages of Injustice: The Culture of "Prize-Giving" and Information Gathering on Female Infanticide in Nineteenth-Century India', *Cultural and Social History* 14, no. 4 (2017): 429-45.
- ²⁰ W.R. Moore, *Report on Female Infanticide* (London: Cox & Wyman, 1859), 57.
- ²¹ Moore, *Report*. Moore was killed during the 1857 uprising, an event that generated enduring fears about dangers of 'untrustworthy natives'. See Kim A. Wagner, *The Skull of Alum Bheg: The Life and Death of a Rebel of 1857* (London: Hurst, 2017).
- ²² British Library, London, United Kingdom [henceforth BL] IOR/L/PS/6/516, Coll 143: Jun 1861-Oct 1861 Letter from Philip Sandys Melvill, Commissioner in the Trans-Sutlej States, to the Judicial Commissioner for Punjab, 14 June 1861.
- ²³ Regarding legal reforms in India, see Martin J. Wiener, *An Empire on Trial: Race, Murder and Justice under British Rule, 1870-1935* (Cambridge: Cambridge University Press, 2009), 128-55.
- ²⁴ Elisa Giunchi, 'The Reinvention of 'Sharī'a' under the British Raj: In Search of Authenticity and Certainty', *Journal of Asian Studies* 69, no. 4 (2010): 1119-42.
- ²⁵ Radhika Singha, *A Despotism of Law: Crime & Justice in Early Colonial India* (Delhi: Oxford University Press, 1998) 80-120. After 1860, Anglo-Muhammadan law pertained only to civil law cases.
- ²⁶ Wiener, *An Empire on Trial*, 8-9.
- ²⁷ Elizabeth Kolsky, 'Codification and the Rule of Colonial Difference: Criminal Procedure in British India', *Law and History Review* 23, no. 3 (2005): 683.
- ²⁸ Elaine Farrell, *'A Most Diabolical Deed': Infanticide in Ireland, 1850-1900* (Manchester: Manchester University Press, 2013); and Timothy P. Siddons, 'Suspected New-Born Child Murder and Concealment of Pregnancy in Scotland, c.1812-c.1930', (PhD diss., University of Edinburgh, 2014).
- ²⁹ John D. Mayne, *Commentaries on the Indian Penal Code*, 10th ed. (Madras: Higginbotham & Co, 1878), 245-261.
- ³⁰ Satadru Sen, *Disciplining Punishment: Colonialism and Convict Society in the Andaman Islands* (New Delhi: Oxford University Press, 2000).
- ³¹ Grey, 'Gender, Religion, and Infanticide', 108-109.
- ³² Kenneth McLeod, *Medico-Legal Experience in the Bengal Presidency: Being a Report on the Medico-Legal Returns Received from the Civil Surgeons of Bengal During the Years 1868 and 1869* (Calcutta: Calcutta Central, 1875), 128.
- ³³ Moore, *Report*, 47.
- ³⁴ Seán Lang, 'Drop the Demon *Dai*: Maternal Mortality and the State in Colonial Madras, 1840-1875', *Social History of Medicine* 18, no. 3 (2005): 357-78; and Ambalika Guha, *Colonial Modernities: Midwifery in Bengal, c.1860-1947* (Abingdon: Routledge, 2018).
- ³⁵ David Arnold, *Toxic Histories: Poison and Pollution in Modern India* (Cambridge: Cambridge University Press, 2016), 28-30.
- ³⁶ Oldenburg, *Dowry Murder*, 60.
- ³⁷ Panigrahi, *British Social Policy*, 113-154.
- ³⁸ Malavika Kasturi, 'Law and Crime in India: British Policy and the Female Infanticide Act of 1870', *Indian Journal of Gender Studies* 1, no. 2 (1994): 169-93.
- ³⁹ Satadru Sen, 'The Savage Family: Colonialism and Female Infanticide in Nineteenth-Century India', *Journal of Women's History* 14, no. 3 (2002): 69.
- ⁴⁰ Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalization* (Minneapolis: University of Minnesota Press, 1996), 114-35.
- ⁴¹ Henry Schwarz, *Constructing the Criminal Tribe in Colonial India: Acting Like A Thief* (Chichester: Wiley-Blackwell, 2010); Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c.1850-1900* (Cambridge: Cambridge University Press, 2019).
- ⁴² Dirks, *Castes of Mind*, 198-227.
- ⁴³ Mark Condos, *The Insecurity State: Punjab and the Making of Colonial Power in British India* (Cambridge: Cambridge University Press, 2017), 75.
- ⁴⁴ Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge: Cambridge University Press, 2001).
- ⁴⁵ Dirks, *Castes of Mind*, 203.
- ⁴⁶ *Ibid.*, 205.
- ⁴⁷ While vernacular proverbs devaluing daughters survive today in regions associated with female infanticide, so do equally influential proverbs condemning this. See Rashmi Dube Bhatnagar, 'Feminine écriture, trace objects and the death of Braj,' in *Unarchived Histories: The 'mad' and the 'trifling' in the colonial and postcolonial world*, ed. Gyanendra Pandey (Abingdon: Routledge, 2014), 75-95.

- ⁴⁸ Panigrahi, *British Social Policy*, 155-90.
- ⁴⁹ BL IOR/R/2/671/25. File 69. 1892-94 & 1900. 77: Correspondence regarding Census and Infanticide 1891 to 1900. Letter from Government of Bombay to Political Department of Bombay, 27 January 1900.
- ⁵⁰ Grey, 'Gender, Religion, and Infanticide', 110, 114-15.
- ⁵¹ 'Infanticide in the NWP', *The Pioneer*, 5 December 1897, 2.
- ⁵² See Jane Chapman and Kate Allison, 'Women and the press in British India, 1928-1934: a window for protest?' *International Journal of Social Economics* 38, no 8 (2011): 676-92.
- ⁵³ 'Infanticide in the NWP', *The Pioneer*, 5 December 1897, 2.
- ⁵⁴ Frustratingly, records do not indicate *why* the funds were never spent in this case.
- ⁵⁵ BL, IOR/L/PJ/6/449 -File 1073.
- ⁵⁶ BL, IOR/L/PJ/6/449 -File 1073. See letter from Patel Vrajbhai Ichabai and others (identified as members of the Kadva caste at Sanand Taluka of Ahmedabad Zilla) to Lord William Sandhurst, Governor of Bombay, 9 October 1896.
- ⁵⁷ BL, IOR/L/PJ/6/449 -File 1073. Note on file following meeting of Bombay Council, 24 February 1897.
- ⁵⁸ D.G. Khandekar, *A Manual of Bombay Acts and Regulations* (Poona: R. Cambay & Co., 1906), 888.
- ⁵⁹ Oldenburg, *Dowry Murder*, 66.
- ⁶⁰ *Times of India*, 28 December 1907, 8.
- ⁶¹ Grey, 'Who's Really Wicked and Immoral, Women or Men?' 44-45.
- ⁶² J.D.B. Gribble and Patrick Hehir, *Outlines of Medical Jurisprudence for India*, 3rd ed. (Madras: Higginbotham & Co., 1892), 266.
- ⁶³ Mary Carpenter, *Six Months in India*, 2 vols. (London: Longmans, Green, & Co., 1868), 202-203.
- ⁶⁴ Margaret L. Arnot, 'Gender in Focus: Infanticide in England, 1840-1880', (PhD diss., University of Essex, 1994).
- ⁶⁵ Sir Madava Rao, 'Considerations on the Crime of Infanticide and its Punishment in India', *Journal of the National Indian Association* 65 (May 1876): 131-37.
- ⁶⁶ Rao, 'Considerations,' 131, 133.
- ⁶⁷ Padma Anagol, *The Emergence of Feminism in India, 1850-1920* (Aldershot: Ashgate, 2005), 160-61.
- ⁶⁸ It is unfortunately impossible to determine figures for outcomes that convicted women might face, though inferences from the records would suggest that imprisonment following sentence review was the most common.
- ⁶⁹ BL IOR P/9421, United Provinces Judicial Proceedings, 1914. See March entry, letter from W.J.D. Burkitt, Secretary to Government of United Provinces, to all District and Sessions judges, 14 August 1913.
- ⁷⁰ Daniel J.R. Grey, 'Discourses of Infanticide in England, 1880-1922', (PhD diss., Roehampton University, 2008), 111-20.
- ⁷¹ The Kingdom of Mysore (now Karnataka), was a princely state, so outside British India, but in practice the Government of Bombay was actively involved in its administration via the Deccan States Agency.
- ⁷² BL IOR P/14467, Bombay Judicial and Home Proceedings, July-December 1925. Letter from Secretary to Government of Bombay to Secretary to Government of India, 25 July 1925, 1267.
- ⁷³ BL IOR P/14467, Bombay Judicial and Home Proceedings, July-December 1925. Statement by V.M. Ferrers, Sessions Judge, 16 April 1925, 1267.
- ⁷⁴ *Ibid.*
- ⁷⁵ 'Concealment of birth' under the Indian Penal Code had complicated case law, albeit to a lesser extent than in England and Wales. See M.H. Starling, *Indian Criminal Law*, 5th ed. (Calcutta: Thacker, Spink, & Co., 1890), 382-383.
- ⁷⁶ Frustratingly, Ferrers did not detail what medico-legal exam the physician had employed, only his overall findings. See statement by V.M. Ferrers. It would undoubtedly have included the 'hydrostatic test,' which tested the fetal lungs. See Gribble and Hehir, *Outlines of Medical Jurisprudence*, 269-281; D.G. Rai, *Hehir's Medical Jurisprudence for India*, 6th ed. (Madras: Higginbothams Dept., 1929), 601-605.
- ⁷⁷ British judges had few qualms about overruling assessors when they disagreed. See Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* (Cambridge: Cambridge University Press, 2014), 197.
- ⁷⁸ Statement by V.M. Ferrers.
- ⁷⁹ Anagol, 'The Emergence of the Female Criminal'; Visweswaran, 'My words were not cared for'.
- ⁸⁰ BL IOR P/14467, Bombay Judicial and Home Proceedings, July-December 1925. Statement by V.M. Ferrers, Sessions Judge, 16 April 1925, 1268.
- ⁸¹ On infanticide in these specific jurisdictions, see Suzanne Stewart-Steinberg, *The Pinocchio Debate: On Making Italians, 1860-1920* (Chicago: University of Chicago Press, 2007), 184-228; Jeffrey S. Richter, 'Infanticide, Child Abandonment, and Abortion in Imperial Germany', *Journal of Interdisciplinary History* 28 (1998): 511-551; James M. Donovan, 'Infanticide and the Juries in France, 1825-1913', *Journal of Family History* 16 (1991): 157-176.

⁸² On infanticide and the law in Brazil and Argentina, see Cassia Roth, *A Miscarriage of Justice: Women's Reproductive Lives and the Law in Early Twentieth-Century Brazil* (Stanford, CA: Stanford University Press, 2020), 35-37; and Kristin Ruggiero, 'Honor, Maternity, and the Disciplining of Women: Infanticide in Late Nineteenth-Century Buenos Aires', *Hispanic American Historical Review* 72, no. 3 (1992): 353-373. Regarding the United States, see Wilma King, 'Mad' Enough to Kill: Enslaved Women, Murder, and Southern Courts', *The Journal of African-American History* 92, no. 1 (2007): 37-56.

⁸³ Daniel J.R. Grey, 'Women's policy networks and the Infanticide Act 1922', *Twentieth Century British History* 21, no. 4 (2010): 441-463.

⁸⁴ 1922 12 & 13 Geo. V c. 18. The Act was amended in 1938 (and 1939 in Northern Ireland) to cover victims aged up to twelve months. It remains in force as of 2020.

⁸⁵ On links between infanticide and postpartum mental illness see Roth, *A Miscarriage of Justice*, 186-188; Hilary Marland, 'Getting Away with Murder?: Puerperal Insanity, Infanticide and the Defence Plea', in *Infanticide: Historical Perspectives on Child Murder and Its Concealment, 1550-2000*, ed. Mark Jackson (Aldershot: Ashgate, 2002), 168-192.

⁸⁶ Statement by V.M. Ferrers.

⁸⁷ BL, IOR P/14467. Bombay Judicial and Home Proceedings, July-December 1925. See copy of Judgments recorded by the High Court in Criminal Appeal No. 194 of 1925 in the case of *Imperator vs. Sundrabai kom Sarwottamacharya*, 1268-1269; and 'Infanticide in India. Revision of Law Wanted', *Times of India*, 11 June 1925, 9.

⁸⁸ BL, IOR P/14467. Bombay Judicial and Home Proceedings, July-December 1925. See opinion of Perceval J., 1269.

⁸⁹ BL, IOR P/14467. Bombay Judicial and Home Proceedings, July-December 1925. Letter from Secretary to Government of Bombay to Secretary to Government of India, 25 July 1925, 1267.

⁹⁰ BL, IOR P/11567. Bengal Judicial Proceedings, 1926. See circular letter from H. Tonkinson, Joint Secretary to the Government of India, to all Local Governments, 2 January 1926, asking for their views on whether this was a desirable measure, 125-127.

⁹¹ Until 1914, just 5 per cent of the Indian Civil Service were not European. On indigenous membership of the legal profession and civil service in India, see John J. Paul, *The Legal Profession in Colonial South India* (Bombay: Oxford University Press, 1991); Sharafi, *Law and Identity*; David C. Potter, 'Manpower Shortage and the End of Colonialism: The Case of the Indian Civil Service', *Modern Asian Studies* 7, no. 1 (1973): 47-73.

⁹² BL, IOR P/11567. Bengal Judicial Proceedings, 1926. Letter from G.C. Sankey, District Judge Myemsingh, to Secretary to Government of Bengal Judicial Department, 29 January 1926, 133. Note importantly that Bengal was never an area associated with female infanticide as a custom at any point in the colonial period.

⁹³ BL, IOR P/14467. Bombay Judicial and Home Proceedings, July-December 1925. Letter from F.W. Allison, Sessions Judge Ahmednagar to Secretary to Government of Bombay, Home Department, 17 February 1926, 1163.

⁹⁴ The Indian Penal Code never defined 'rigorous' as opposed to 'simple' imprisonment beyond that the former mandated hard labor. See Walter Morgan and Arthur G. Macpherson, *The Indian Penal Code (Act XLV of 1860), With Notes* (Calcutta: GC Hay and Co., 1863), 32.

⁹⁵ Letter from F.W. Allison.

⁹⁶ BL, IOR P/14467. Bombay Judicial and Home Proceedings, July-December 1925. Letter from E Clements, District Judge Ahmedabad, to Secretary to Government of Bombay Home Department, 18 March 1926, 1163.

⁹⁷ BL IOR P/11583, United Provinces Judicial Proceedings, January-December 1926. Letter to provincial government from L. Stuart, Chief Judge, 22 January 1926, 21.

⁹⁸ On representations of the 'modern woman' and sexuality in interwar Britain, see Lucy Bland, *Modern Women on Trial: Sexual Transgression in the Age of the Flapper* (Manchester: Manchester University Press, 2013). Asian cities also witnessed similar debates: see Su Lin Lewis, *Cities in Motion: Urban Life and Cosmopolitanism in Southeast Asia, 1920-1940* (Cambridge: Cambridge University Press, 2016), 227-263.

⁹⁹ See different opinions offered by judges and civil servants from across Bengal, Bombay and the United Provinces as reproduced in BL IOR P/11567. Bengal Judicial Proceedings, 1926, 125-168; BL IOR P/11533. Bombay Judicial and Home Proceedings, January-June 1926, 1163-1180; BL IOR P/11583. United Provinces Judicial Proceedings, January-December 1926, 15-24.

¹⁰⁰ BL IOR P/11567. Bengal Judicial Proceedings, 1926. Letter from A.W. Cook, Commissioner of Burdwan Division, to Secretary to Government of Bengal, Judicial Department, 16 February 1926, 139.

¹⁰¹ BL Bengal Judicial Proceedings, 1926, IOR P/11567. Letter from N.G.A. Edgley, District Judge Faridpur, to Secretary to Government of Bengal, Judicial Department, 15 February 15 1926, 137.

¹⁰² BL IOR Mss Eur F 165/163. Letter from Cornelia Sorabji [no day or month listed, but evidently written in 1926] to Government of Bengal Judicial Department.

¹⁰³ For broader context see Suparna Gooptu, *Cornelia Sorabji, India's Pioneer Woman Lawyer: A Biography* (New Delhi: Oxford University Press, 2006).

¹⁰⁴ Letter from H. Tonkinson.

¹⁰⁵ Ibid.

¹⁰⁶ The cruelty of this practice was a longstanding complaint with regard to English infanticide cases until 1922. See Grey, 'Discourses', 88-143.

¹⁰⁷ See for example BL IOR P/11567, Bengal Judicial Proceedings, 1926. Letter from W. McC. Sharpe, Officiating registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to Secretary to the Government of India, Home Department, 17 May 1926, 165. Yet there is copious evidence that miscarriages of justice were an everyday and indeed 'normal' aspect of British rule in South Asia. See Jordanna Bailkin, 'The Boot and the Spleen: When Was Murder Possible in British India?' *Comparative Studies in Society and History* 48, no. 2 (2006): 463-494; Durba Ghosh, 'Household Crimes and Domestic Order: Keeping the Peace in Colonial Calcutta, c. 1770-c. 1840', *Modern Asian Studies* 38, no. 3 (2004): 599-623; Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010).

¹⁰⁸ BL IOR P/11533, Bombay Judicial and Home Proceedings, January-June 1926. Letter from Secretary of Government of Bombay to Secretary to Government of India, 24 June 1926, 1180.

¹⁰⁹ Grey, 'Women's Policy Networks.'

¹¹⁰ BL, IOR P/11567. Bengal Judicial Proceedings, 1926. Letter from DC Patterson, Officiating Secretary for Government of Bengal Judicial Department to Secretary of Government of India Home Department, 10 August 1926.

¹¹¹ 'Murder of New-Born Child: Two Sisters Jailed,' *Times of India*, 21 August 1929, 7.

¹¹² Ibid.

¹¹³ Gribble and Hehir, *Outlines of Medical Jurisprudence*, 266.

¹¹⁴ Anti-imperial resistance was of course not unique to the 1920s: see Priyamvada Gopal, *Insurgent Empire: Anticolonial Resistance and British Dissent* (London: Verso, 2019).