



ISSUE ADVISORY - Criminalizing Miscarriage: Purvi Patel Case Reveals Growing Pattern of Prosecutions
By Gillian Barna, NOW Government Relations Intern
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Update: In late April, after assembling a new legal team, Purvi Patel filed an appeal against her feticide and felony neglect convictions. The appeal argues there was no proof of Patel taking any drugs with the intention to end her pregnancy. Law professors from Indiana and Stanford universities have agreed to handle her appeal for free out of a concern about the state's feticide law. As the Patel case demonstrates, these types of feticide laws can permit prosecuting women when it is not clear whether a miscarriage has occurred.

Additionally, we are increasingly seeing restrictive state laws allow prosecution of pregnant women for engaging in actions thought to threaten the fetus. The recent push by abortion rights opponents for bans on abortion past the 20th week of gestation represent another type of serious threat to any woman who encounters problems in her pregnancy.

Miscarried, but Found Guilty of Crimes: Purvi Patel, a 33-year-old Indian immigrant in South Bend, Ind., is serving a 30-year sentence for neglect of a child and a six-year sentence for felony feticide, concurrently. She has been ordered to serve 20 years, and then will serve a ten-year suspended sentence. The case has generated a great deal of controversy and, some say, is indicative of a growing pattern of punishing pregnant women when they miscarry or engage in activities that might harm their fetus.

Patel was accused of buying pills online from Hong Kong and taking them in efforts to end her pregnancy in July, 2013. At the time, Patel thought she had been pregnant for about two months. Though it was reported that she took the pills, there was no evidence she took such drugs because the drugs did not show up in her blood tests. Patel suffered a miscarriage and delivered a stillborn, estimated to be 23-25 weeks old in gestation, which she put in a bag and threw in the dumpster. Regardless of how people feel about Patel or her actions upon delivering a stillborn, the only evidence that exists is that she suffered a miscarriage. And she has been sentenced to decades in prison for it.

Dubious Charges Made: There's much to be concerned about as women viewing this case, especially when one considers what seems to be conflicted charges: feticide and felony child neglect? How is it possible to be convicted of killing a fetus in the womb and then neglecting the child outside the womb? Does the first not assume the fetus died before birth? But looking closer, we learn that according to Indiana law, a person may be found guilty of feticide by making a "deliberate attempt" to terminate a pregnancy, with an exception for legal abortions. Because Indiana law requires a live birth to support the charge of feticide, this allowed prosecutors to further charge her with neglect when, they say, Patel delivered a live fetus and then abandoned it. Testimony at the trial in March indicated that Patel was 23-25 weeks

pregnant, not in her first trimester; Indiana law requires that abortions performed after the first trimester must be performed in a hospital or licensed surgical center, which makes second trimester abortions unnecessarily expensive.

The legal phrasing of "deliberate attempt" is also very worrisome and poses a threat to women's reproductive rights. What constitutes a "deliberate attempt?" If a woman previously researches facts on abortion or potential abortion service resources and then miscarries, will she be found guilty of feticide? That appears to have happened to Purvi Patel, who had texted a friend about her ambivalence to the pregnancy and about the pills in Hong Kong, which served as "proof" that she attempted to end her pregnancy. Indeed, observers agreed that it was the cell phone messages that helped convict Patel. There was no physical evidence of her taking the abortion-inducing drugs, but it appears that a quick Google search and subsequent miscarriage can throw a woman in jail for years.

The Lung Float Test: Ever heard of it? Probably not, as it has been discredited as a legitimate test. But this was the "evidence" that allowed Patel to be convicted of felony child neglect. Invented in the 17th century, the Lung Float Test is based on a theory that if a baby took at least one breath, the lungs would float in water. Else, they would sink. The lungs were tested and they floated. But this does not mean the fetus was born alive.

Patel tried to resuscitate the baby – air enters the lungs through this process and could have allowed the lungs to pass the Lung Float Test, even if the baby was born a stillborn. A stillborn baby could pass the Lung Float Test if the baby had decomposed, even just a little bit, as the lungs can fill with gas bubbles causing them to float in liquid. Sometimes the pressure on a baby's chest emerging from the vaginal canal can fill its lungs with air, even if the baby is a stillborn.

The test has been largely discredited and, in fact, it has been used before to punish women who give birth to stillborn fetuses. In 2006, a woman in Alabama was imprisoned because the prosecutor used the Lung Float Test as evidence that she had suffocated her child. Nine months later, this was disproven by forensic experts who concluded the baby had pneumonia and was stillborn.

Unintended Consequences: Purvi Patel's legal troubles began when she sought help from the hospital and eventually had to admit to medical staff that she had suffered a miscarriage and disposed of the fetal remains in the dumpster. In prosecuting Purvi Patel, the judicial system is discouraging women who have miscarried from seeking medical attention. At a time when a woman most needs help, she will be reluctant to find help for fear of repercussion. In Indiana, women seeking abortions must receive state-directed, in-person counseling including an ultrasound, and the health care provider must offer the option to the woman of viewing the images. Women must also wait 18 hours before any procedures can be initiated. So both the pre-abortion and post-miscarriage laws are designed to restrict access to appropriate health care

services and to potentially criminally prosecute women even when the facts are not fully substantiated.

Other Similar Cases: While Purvi Patel's case astonishes many who didn't think that the justice system to be capable of such cruelty, her case is hardly an anomaly. According to *Rolling Stone*, 38 states have fetal-homicide statutes, with more than half applying to the early stages of a pregnancy. Personhood and fetal homicide laws are the primary vehicles in abortion rights opponents' efforts to overturn *Roe v. Wade*. They directly and indirectly challenge the Supreme Court's view that the Constitution's definitions of persons did not extend to pre-natal life, as abortion was a matter of a woman's right to privacy.

Feticide and fetal "personhood" laws, plus other anti-abortion measures are increasingly being used as the basis for arresting women who have no intention of ending a pregnancy and for preventing women from making their decisions about how they will give birth. Women have been punished for miscarriages and pregnancy complications in efforts promoted by abortion-rights opponents to criminalize the loss of a pregnancy.

A study published by Lynn Paltrow and Jeanne Flavin in the **Journal of Health Politics, Policy and Law** documented 413 arrests, detentions and imprisonment of pregnant women from 1973 to 2005.* They note the myriad reasons cause that pregnant women are to be prosecuted. A woman in Iowa was arrested for attempted fetal homicide after she fell down a flight of stairs while pregnant. A woman in Utah was arrested for fetal homicide after she gave birth to twins, one of whom was a stillborn. Health care providers believed she caused the stillbirth with her decision to delay her cesarean. In Indiana, Bei Bei Shuai, they write, in an act of desperation, attempted suicide when she was 33 weeks pregnant. Bei Bei lived, but the baby did not. As a result of her suicide attempt while pregnant, Shuai was incarcerated without bail for more than a year on charges of attempted feticide and murder of a viable fetus. Paltrow and Flavin add that these are not isolated cases: they have gone on to document 400 more since 2005.

Purvi Patel may have unintentionally become a symbol of this very destructive wave of restrictive laws and aggressive prosecutions. Hopefully, her case will inspire activists to fight back against both the harmful laws and the misogynistic targeting of pregnant women. The criminalization of problems in pregnancy puts this country on a dangerous path and it is unacceptable.

**Arrests and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, by Lynn M. Paltrow and Jeanne Flavin, <http://jhppl.dukejournals.org/content/38/2/299.full.pdf+html?sid=b0811f36-d4e4-4b51-a830-e175e6eee40c>