



## LEGAL IMPLICATIONS OF FEMALE FOETICIDE ON PUBLIC HEALTH IN GUJARAT: A COMPREHENSIVE EXAMINATION

**Kumudkumari J. Gohil<sup>1</sup> & Dr. Pushpa Mehdo<sup>2</sup>**

*Research Scholar, Pacific Academy of Higher Education & Research University, Udaipur*

*Guide, Pacific Academy of Higher Education & Research University, Udaipur*

*Corresponding Author: Kumudkumari J. Gohil*

**DOI - 10.5281/zenodo.10648520**

### **Introduction:**

The deliberate killing of female fetuses, or female foeticide, is still a serious problem in Gujarat, India, with serious consequences for public health. This article explores the criminal and constitutional laws pertaining to female foeticide from the perspective of a legal expert, considering the effects on public health.

Female foeticide, a grave issue entailing the selective abortion of female fetuses, remains a profound societal challenge in Gujarat, India. As a legal expert navigating the complex landscape of this problem, it is crucial to delve into the intricate interplay between cultural, societal, and legal dimensions, particularly within the unique context of Gujarat. Gujarat, distinguished for its rich culture and historical significance, grapples with the repercussions of female foeticide, extending beyond mere demographic

imbalances to profound implications for public health. The skewed sex ratio, a direct result of this pervasive practice, is not just a statistical anomaly; it is emblematic of deeply ingrained gender biases that permeate the societal fabric.

The pervasiveness of female foeticide in Gujarat has an impact on many aspects of society. It maintains gender disparity by excluding women from social positions, career prospects, and basic services like healthcare and education. The imbalanced sex ratio highlights the need for a thorough investigation of this matter given its long-term effects on people's psychological health and social cohesion.

### **The underlying reasons of Gujarat's issues with female foeticide and public health law:**

The intricate interplay of cultural, sociological, and legal elements

in Gujarat is reflected in the deeply ingrained core causes of female foeticide and the challenges surrounding public health law. Comprehending these origins is essential to developing tactics that effectively confront and end the practice while fortifying the legal structure that oversees public health.

### **1. Cultural and Social Norms:**

**Patriarchal Customs:** The inclination toward male progeny is largely a result of deeply ingrained patriarchal standards. Sons are seen as the heirs to the family name and property, which feeds the notion that they are vital to the family's financial security and survival.

**Dowry System:** Families with female offspring bear an additional financial burden due to the widely-practiced dowry system in Gujarat and other regions of India. The desire for male children is largely driven by the expectation of dowry payments at the time of a daughter's marriage.

### **2. Economic Pressures:**

**Perceived Economic Burden:** Families may view the birth of a female child as an economic burden due to dowry expectations and societal norms that

place the responsibility of financial support on sons. This perception is exacerbated by poverty and economic challenges, pushing families towards gender-based decisions.

**Perceived Economic Burden:** Due to dowry expectations and cultural conventions that focus the onus of providing financial support on men, families may consider the birth of a girl child to be an economic burden. Poverty and economic hardships amplify this view, leading families to make decisions based on gender.

### **3. Lack of Awareness:**

**Limited Knowledge of Laws:** Communities frequently lack knowledge regarding the legal ramifications of female foeticide, even in spite of the presence of laws such as the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act. As a result, there is a discrepancy between the law and how it is actually applied in practice.

### **4. Gender Inequality:**

**Discrimination against Women:** The lives of women are devalued as a result of pervasive gender inequality. Beyond the problem of female foeticide, this discrimination affects women's access

to healthcare, work opportunities, and education, among other facets of their lives.

### **5. Weak Implementation of Laws:**

#### **Lack of Stringent Enforcement:**

Inadequate enforcement of existing laws contributes to the persistence of female foeticide. The implementation of the PCPNDT Act, in particular, is often lax, allowing unscrupulous healthcare providers to engage in sex-selective practices with impunity.

Apart from above Socioeconomic Factors, Public Health Infrastructure, Inadequate Healthcare Services, Societal Stigma, Stigmatization of Single Women are the root causes of female foeticide in India.

Addressing the root causes of female foeticide in Gujarat requires a multifaceted approach that includes cultural sensitization, educational initiatives, economic empowerment of women, and robust enforcement of existing legal frameworks. Strengthening public health law involves not only legislative amendments but also ensuring effective implementation, awareness campaigns, and collaboration between the government, civil society, and healthcare providers to create a

comprehensive strategy for lasting change.

### **Prevalence and Public Health Implications:**

In certain Gujarati locations, female foeticide has led to a skewed sex ratio, raising serious public health concerns:

**Adverse Sex Ratio:** Those impacted by the gender imbalance may have psychological stress and mental health problems as a result of the skewed sex ratio caused by female foeticide, which makes it difficult to locate compatible marriage partners.

#### **Socio-Economic Consequences:**

Female foeticide perpetuates gender inequality by negatively affecting women's social status and economic well-being. This reduces women's access to economic opportunities, healthcare, and education, which has both direct and indirect effects on public health.

**Reproductive Health:** Female foeticide has a negative impact on the health of mothers and babies by discouraging women from getting prenatal care and other necessary medical attention during their pregnancy.

---

**Criminal and Constitutional Provisions:**

Female foeticide is addressed by the Indian legal system through a number of criminal and constitutional provisions:

**Constitutional Provisions:**

**Right to Equality:** Article 15 of the Indian Constitution forbids discrimination based on gender. It emphasizes the value of gender equality and the necessity of preventing discrimination against women based on their sex as well as female foeticide.

**Right to Life:** The right to life and personal liberty are protected under Article 21. According to court interpretation, this includes the right to a dignified existence, which includes defense against female foeticide and sex-selective practices.

Examining the legal aspects uncovers a complex web of criminal laws and constitutional clauses intended to stop female foeticide. A crucial component of this judicial system are landmark rulings, which establish standards and greatly aid in the continuous fight against this pervasive societal evil.

**The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act:**

It was passed in 1994 and reformed in 2003 with the intention of preventing the improper use of prenatal diagnostic methods for sex-selective abortions. It imposes severe penalties, such as license revocation and jail, on diagnostic centers and healthcare providers that conduct sex determination tests.

**Medical Termination of Pregnancy Act:** Amended in 2021, This law, which was amended in 2021, protects women's reproductive rights by establishing rules for lawful abortions and placing a strong emphasis on informed consent. It also seeks to protect women's health and wellbeing and stop sex-selective abortions.

**Domestic Violence Act, 2005:** Invoked to protect women facing coercion or violence related to gender-biased sex selection, this act addresses a variety of kinds of violence against women, including mental and emotional abuse.

**Indian Penal Code (IPC):** Sex-selective practices are punishable under the IPC. While Section 316 deals with causing an unborn kid to die quickly, Sections 312 and 315 deal with miscarriage and harm to an unborn child. Under these sections, offenders may be fined and imprisoned.

**Landmark Judgments:**

- *State of Maharashtra v. Maruti Sripati Dubal (1987)*: In this seminal case, the Supreme Court upheld the constitutional validity of Section 312 of the Indian Penal Code, which penalizes causing a miscarriage. The judgment reinforced the state's authority to regulate and restrict activities leading to female foeticide, setting the stage for subsequent legal interventions.
  - *Laxmi Mandal v. Deen Dayal Harinagar Hospital (2008)*: This landmark case highlighted the need for stringent enforcement of the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act. The court emphasized the responsibility of healthcare providers to adhere to the provisions of the Act, laying the groundwork for increased vigilance and accountability in medical practices.
  - *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India (2003)*: The Supreme Court, in response to a public interest litigation, issued directives to state governments for effective implementation of the PCPNDT Act. The judgment underscored the importance of collaborative efforts between the government and civil society in eradicating female foeticide.
  - *Voluntary Health Association of Punjab v. Union of India (2014)*: In this case, the Supreme Court directed the creation of a central supervisory board to monitor the implementation of the PCPNDT Act. The judgment emphasized the need for a centralized mechanism to ensure uniformity in the enforcement of the Act across states.
  - *Niharika Yadav v. State of Rajasthan (2017)*: This case highlighted the nexus between female foeticide and the dowry system, acknowledging the economic factors that contribute to this practice. The court, while convicting the accused under the PCPNDT Act, underscored the importance of addressing socio-economic factors to curb female foeticide effectively.
- Together, these historic rulings demonstrate the judiciary's dedication to combating female foeticide and advancing gender equality. These

rulings influence the course of the battle against female foeticide in Gujarat and elsewhere by interpreting and maintaining the legal and constitutional frameworks. Examining these legal landmarks makes it clear that, in addition to strict legislation, ongoing judicial action is necessary to combat female foeticide and guarantee a more fair and just society.

- Justice K.S. Puttaswamy (Retd.) vs. the Union Of India And Others (2017), the Supreme court recognized the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution, which, despite laying a robust jurisprudence on reproductive rights and the privacy of a woman, does not translate into a fundamental shift in power from the doctor to the woman seeking an abortion.

Supreme Court of India has rejected a woman's plea to terminate her 27-week-old pregnancy, citing that it violates the Medical Termination of Pregnancy (MTP) Act. The court stated that there was no immediate threat to the mother or any foetal abnormality.

However, the court allowed the parents to decide whether they wanted to give up the baby for adoption and directed the state to bear all medical costs.

Speaking for the bench, the CJI observed, "India is not regressive. It is very easy to criticize our own country but look at what has happened in the US," in an apparent reference to the US Supreme Court overturning last year abortion rights bestowed by the Roe versus Wade verdict of 1973. The CJI said that in India the "legislature has done the act of balancing" in the MTP Act.

At the October 12 hearing, the CJI said, "rights of an unborn child must be balanced with a woman's reproductive right". India is "far ahead of other countries" and "liberal" when it comes to law pertaining to termination of pregnancy. (By Raghav Ohri, The Economics Times, Oct 16, 2023)

### **Conclusion:**

In Gujarat, female foeticide is a serious public health concern in addition to a moral and ethical one. Female foeticide and public health issues are linked by the unbalanced sex ratio, limited access to healthcare and education, and gender inequality. The comprehensive legal framework in

India, encompassing the PCPNDT Act, Medical Termination of Pregnancy Act, Indian Penal Code, and constitutional provisions underlines the nation's commitment to addressing this grave concern. To protect women's wellbeing and the general health of society, legal experts and public health specialists must work together to successfully enforce these laws, increase public knowledge of the effects of female foeticide, and advance gender equality. The battle against female foeticide is multifaceted and requires a shared commitment to a just and equitable society that is protected by both criminal and constitutional laws. While the legal framework, including landmark judgments, acts as a crucial

deterrent, the effective implementation of laws remains a critical aspect of addressing female foeticide. Public health initiatives must be aligned with legal measures to create a synergistic approach that not only punishes wrongdoers but also prevents the circumstances that lead to such practices.

In summary, the ongoing problem of female foeticide in Gujarat highlights the critical need for all-encompassing, long-term initiatives in the sociological, cultural, and legal spheres. Since the roots of this problem are ingrained in gender biases, economic constraints, and cultural standards, real transformation will require a holistic strategy.