

Structural Violence Against Women and Girls and Sexual and Reproductive Health and Rights

Joint Submission

by Right Here Right Now Nepal (RHRN Nepal) and The Asian Pacific Resource & Research Centre for Women (ARROW)

to the Special Rapporteur on Violence Against Women (VAW)

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Introduction

This position paper has been developed by Right Here Right Now (RHRN) Nepal for the consideration of Special Rapporteur on Violence Against Women (VAW), Dr. Dubravka Šimonović, prior to her country visit to Nepal. RHRN Nepal is a civil society network comprising of 15 women-led, youth-led and youth-serving organizations¹ and has been advocating for advancement of young people's sexual and reproductive health and rights (SRHR) and bodily autonomy. Our advocacy work focuses on three priority areas: i) provision of age-appropriate comprehensive sexuality education, ii) legalization of same sex marriage, and iii) provision of stigma-free, youth-friendly safe abortion services.

This paper aims to highlight some of the pressing issues faced by women and girls in Nepal with respect to violations of their bodily rights and autonomy and to explore various forms of structural violence against women and girls in relation to their sexual and reproductive health and rights (SRHR). The paper also aims to provide key recommendations to mitigate these various forms of structural and institutional violence to fully realise women and girls' right to their bodily autonomy.

The paper has been divided into three main components: i) definition of structural violence and its relation to women and girls' bodily autonomy and sexual and reproductive health and rights (SRHR) for the purposes of this paper, ii) country context including demographic, socio-cultural, and legal and policy context, iii) key issues with respect to women and girls bodily autonomy and SRHR and how structural and institutional violence infringes on these rights.

¹ Including, Association of Youth Organization Nepal (AYON), Beyond Beijing Committee, Blue Diamond Society, CDS PARK Mugu, Family Planning Association of Nepal, Federation of Sexual and Gender Minorities Nepal, Human Protection and Environment Protection Forum, Loom Nepal, Restless Development, Rural Women's Network Nepal, Visible Impact, Youth Action Nepal, Youth Development Center, YUWA, Yuwalaya.

Section 1: Structural Violence against Women and Girls and Sexual and Reproductive Health and Rights

Structural violence is a form of violence which is perpetuated by social structures or social institutions (e.g. family, religious institutions and authorities, community, educational institutions, health services facilities, state and the government, etc) when they harm an individual by denying them their basic human needs and rights². Structural violence is an “avoidable impairment of fundamental human needs”, rather than a direct form of physical harm³. Structural violence operates virtually invisible as it often comes from “structures” and not from a person. It is also gendered as women and girls are more vulnerable to structural violence due to prevalent socio-cultural norms, which are often deep rooted in patriarchy, gender stereotypes and sexism, and favour control of women and girls’ bodies and discrimination against them. Structural violence, when it occurs through negligences or harmful laws/policies/practices by State institutions, is sometimes referred to as “institutional violence”. However, for the purpose of this paper we will be using the terms “structural violence” and “institutional violence” interchangeably. In addition, we will broadly categorise structural violence as, i) premature and preventable death attributed to inequitable life opportunities, ii) and a reduced quality of life in which women and girls’ potential is diminished⁴.

While there are many forms of discriminations and violations which generate from structural violence against women, it is in the area of SRHR of women and girls where it is persistent in its worst form. The prevailing ideas about the familial and reproductive role of women and girls and gender stereotyping are the key driving factors behind structural violence when it comes to their SRHR. In addition, state and duty-bearers also often perpetuate the culture of structural violence by failing to introduce legal, regulatory and programmatic remedies.

The structural violence against young and unmarried women and girls in relation to their sexual and reproductive health and rights is even higher due to many intersecting factors including power dynamics in the family; social, cultural and religious moral codes and norms around women and girls’ sexuality; and the perceived reproductive role of women and girls, among others.

International Human Rights Standards and Norms Around Sexual and Reproductive Health and Rights (SRHR)

Women and girls’ sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) have both clearly indicated that women’s right to health includes their sexual and reproductive health. This means that States have obligations to fully respect, protect and fulfill rights related to women’s sexual and reproductive health.⁵

² The concept was first introduced by Johan Galtung in 1969 in his paper here: Violence, Peace, and Peace Research Johan Galtung - Journal Of Peace Research - 1969. <http://journals.sagepub.com/doi/10.1177/002234336900600301>

³ Ibid.

⁴ (Brock-Utne, 1989)

⁵ Ohchr | Sexual and Reproductive Health and Rights

<https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.aspx>

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health maintains that women are entitled to reproductive health care services, goods and facilities that are: (a) available in adequate numbers; (b) accessible physically and economically; (c) accessible without discrimination; and (d) of good quality⁶

In the ICPD (International Conference on Population and Development) Programme of Action, Member States recognized that reproductive rights embrace existing human rights and that sexual and reproductive health and rights are central to health, well-being and to development.⁷

Further, the Beijing Platform for Action states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”⁸

⁶ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/61/338

⁷ International Conference on Population and Development: <https://www.unfpa.org/icpd>

⁸ <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

Section 2: Country Context

Demographic Profile

Nepal, like many of the South Asian countries, has been undergoing rapid demographic changes during the last few decades. In recent years, in Nepal, fertility and mortality have been declining fast. Between 2001 and 2011, the average annual growth rate was 1.35 percent, compared to average annual growth rate of 2.25 percent between 1961 and 2001⁹. Since then, the population rate has declined. The recent decline in the annual growth rate can be attributable to a large number of the absentee population (estimated at around 1.92 million as of 2011) due to higher percentages of population migrating abroad.

Spatial distribution of the population shows an ever declining share of the mountain and hill population compared to the Terai population. The proportion of the total population living in the mountain and hill regions combined has declined to 50 percent by 2011 from 62 percent in 1971¹⁰. Among the seven federal States, State Three's share of total population is 21 percent followed by State Two with 20 percent, States One and Five have 17 percent each, State Seven 10 percent, and State Four nine percent.¹¹

The total population of Nepal comprises of over 125 caste/ethnic groups. These can be broadly categorized into five groups: Chhetri/Bahun, Janajati, Terai castes, Dalit, and Muslim. The largest group is Janajati (36%), followed by Chhetri/Bahun (31 percent), Terai castes and Dalit both (14 percent) and the minority Muslim (4 percent). In four out of seven States the largest group is Janajati, in two States it is Chhetri/Bahun and in one State it is Terai castes.¹²

While overall poverty has declined, it has worsened in the high mountain region and in urban centres. School enrolment for girls has improved substantially but the dropout rate is still very high and it be attributed to multiple factors including girls becoming victims of early marriage and a structurally patriarchal system. Discrimination toward women and girls is rampant, son preference is high and employment opportunities for females is low. They are often victims of physical and sexual violence, with as many as 22 percent of women in Nepal aged 15-49 have experienced physical violence while 7 percent of women have experienced sexual violence.¹³ This is high among women and girls in the Terai, among Dalit and women with no education. The sex-selective abortion practice appears to be increasingly evident in some parts of Nepal as 12 of Nepal's 75 districts, which comprise over 25 percent of the total population, show sex ratio at birth over 110 (per 100 females).

Though women and girls make larger part of the population, their issues often receive less attention from duty-bearers. Women and girls are the ones less educated, with female literacy

⁹ UNFPA Nepal. *Population Situation Analysis of Nepal*. [https://nepal.unfpa.org/sites/default/files/pub-pdf/Nepal Population Situation Analysis.pdf](https://nepal.unfpa.org/sites/default/files/pub-pdf/Nepal%20Population%20Situation%20Analysis.pdf). unfpa nepal 2017.

¹⁰ Ibid.

¹¹ Central Bureau of Statistics. *Population Monograph of Nepal Volume I*.

[http://cbs.gov.np/image/data/Population/Population Monograph of Nepal 2014/Population Monograph of Nepal 2014 Volume I FinalPrintReady1.pdf](http://cbs.gov.np/image/data/Population/Population%20Monograph%20of%20Nepal%202014/Population%20Monograph%20of%20Nepal%202014%20Volume%20I%20FinalPrintReady1.pdf). 2014.

¹² UNFPA Nepal. *Population Situation Analysis of Nepal*. [https://nepal.unfpa.org/sites/default/files/pub-pdf/Nepal Population Situation Analysis.pdf](https://nepal.unfpa.org/sites/default/files/pub-pdf/Nepal%20Population%20Situation%20Analysis.pdf). unfpa nepal 2017.

¹³ Ministry of Health, Nepal; New ERA; and ICF. 2017. *Nepal Demographic and Health Survey 2016*. Kathmandu, Nepal: Ministry of Health, Nepal.

rate being 57.4 percent in comparison to male literacy rate which is 75.1 percent.¹⁴ Women and girls are often the ones suffering from unmet needs of health services including sexual and reproductive health, disease and violence. The Contraceptive prevalence rate (CPR) has stayed stagnant for five consecutive years. In 2016, CPR was 53 percent with 43 percent of it being for modern contraception. There is still high unmet need for contraception services i.e. 24 percent.

Overview of Legal and Policy Provisions Against VAW and SRHR of Women and Girls

Table 1: Nepal's International Human Rights Commitments in relation to Sexual and Reproductive Health and Rights (SRHR)

International Human Rights Treaties and Women and Girls' SRHR Commitments	International Adoption	Ratification by Nepal
Convention on the Elimination of Discrimination against Women (CEDAW)	1979	1991
Convention on Economic, Social and Cultural Rights (CESCR)	1966	1991
Convention on the Rights of the Child (CRC)	1989	1990
Convention on the Elimination of all forms of Racial Discrimination (CEPD)	1965	1971
International Covenant on Civil and Political Rights (CCPR)	1966	1991
Convention on the Rights of Persons with Disabilities (CRPD)	2006	2010
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1999	2007
Key International Development Commitments on Women and Girls' SRHR	Year of Adoption	
International Conference on	1994	

¹⁴ Planning N, Secretariat C. National Population and Housing Census 2011 Central Bureau of Statistics. 2012;01.

Population and Development Programme of Action (ICPD PoA)		
Beijing Declaration on Women Platform for Action	1995	
Paris Declaration	2005	
Global Strategy for Women & Children's Health	2010	
2030 Agenda for Sustainable Development	2015	

Source: Tracking Cases of GBV, UNFPA Nepal, 2013

Table 2: Overview of Laws and policies on Violence Against Women in Nepal

Constitutional Provisions	Interim Constitution of Nepal, 2007, and the Constitution of Nepal, 2015 (various articles)
Legal Provisions	<i>Muluki Ain</i> , Nepal's Civil Code 1963, multiple provisions and subsequent amendments
	The Domestic Violence (Offense and Punishment) Act 2009
	The Human Trafficking and Transportation (Control) Act 2007
	Sexual Harassment at the Workplace (Elimination) Act 2015
	The Witchcraft Allegation (Offense and Punishment) Act 2016
	Social Practices (Reform) Act 1976
	Police Act, 1955
	National Woman Commission Act 2007
Special Laws	Gender Violence Elimination Fund (Operation) Rules, 2011
	National Action Plan against gender-based violence, 2010
	National Strategy and Action Plan for Gender Empowerment to End Gender Based Violence 2012/13–2016/17

Policies on VAW and SRHR of Women and Girls	National Safe Abortion Service Policy 2003
	National Reproductive Health Strategy, 1998
	National Adolescent Health and Development Strategy, 2000 and its Implementation Guidelines, 2008
	Safe Motherhood Policy, 1998
	National Strategy on Family Planning, 2012
	Health Sector, Gender Equality and Social Inclusion Strategy, 2009 and its Operational Guidelines, 2013
	National AIDS Policy, 1995 (updated in 2011)
	Free Essential Health Care Policy, 2008

Sources: Tracking Cases of GBV, UNFPA Nepal, 2013; Country Profile on SRH, Nepal, ARROW and BBC, 2014

Section 3: Structural Violence and Women and Girls' Experiences with regards to SRHR in Nepal

As discussed above, Nepal has made big leaps in terms of improving and strengthening its legal and policy landscape to provide women and girls the bodily rights enshrined in the country's constitution and international human rights commitments. However, due to widespread social and cultural norms and codes, the lived realities of majority women and girls remain bleak when it comes to their sexual and reproductive health and rights. We provide a situational analysis of some of the key SRHR issues influenced and often heightened by structural violence in Nepali context:

1) Child Marriages and Adolescent Pregnancies

37 percent of girls marry before age 18 in Nepal and 10 percent before they turn 15¹⁵.

Gender discrimination and inequality remains one of the key driving factors behind high percentages of child marriages in Nepal and it often intersects with poverty and economic factors as well¹⁶.

The social and cultural convention dictates that girls should live with their husband's family, while boys are expected to stay with their parents and support them as they grow old. Therefore, girls are seen as a financial burden by their families. They are more likely to be kept at home to help with the domestic work, rather than study, and are denied education opportunities. As soon as they reach the age of menarche, they are married off so the family can unload the "financial burden"¹⁷.

In the southern region of Nepal called Terai, child marriages is prevalent more, due to the belief that when a girl menstruates for the first time, she is ready for marriage, and that it is in the family's interest to get her married as quickly as possible to avoid the risk of her engaging in a premarital relationship. In these region, the dowry is paid according to the qualification of the groom, and older age or educated girl might choose an educated groom. To avoid that too, she is married off before she completes her education

A growing number of young girls are entering into love marriages with spouses of their own choice. Often it's happening in the context where young girls wish to escape abusive circumstances or to cope with dire deprivations - such as food - at home¹⁸.

The harms of early and child marriages are well-known. Due to the perceived reproductive role of women and girls and the social pressure to prove their fertility after marriage, young brides are expected to become pregnant quickly, and they suffer serious health consequences due to early and closely-spaced pregnancies. Notably, 40 percent of married girls aged 15-19 in Nepal have already given birth to at least one child. Infant mortality rates are higher in the context of early pregnancy and girls who marry young are at greater risks of domestic abuse and violence.

¹⁵ United Nations Children's Fund, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014. https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf

¹⁶ "Our Time to Sing and Play." n.d.

<https://www.hrw.org/report/2016/09/08/our-time-sing-and-play/child-marriage-nepal>

¹⁷ Ibid.

¹⁸ Ibid.

Furthemore, there are numerous health risks that a girl is exposed to when she is married before she turns eighteen. She is expected to start being sexually active and bear children before her body has fully matured. One common problem amongst women in Nepal that is related to early child birth is uterine prolapse – a debilitating condition where the muscles and ligaments can no longer hold the uterus in place. While uterine prolapse can be caused by inadequate child spacing, lack of proper rest after childbirth and demanding labor during pregnancy, it has also been linked to early child birth. Symptoms can include pelvic pain, frequent urination, painful sexual intercourse, vaginal bleeding, reproductive and urinary tracts infections, constipation, vaginal discharge, difficulty walking, and urinary incontinence, which severely compromise affected girl's ability to perform daily activities like walking, manual labor, sitting, or lifting her baby

Child marriage is illegal in Nepal. The current law sets the minimum age of marriage at 20 for both men and women. Under the law, adults who marry children, family members and other adults who arrange marriages of children, and religious leaders who perform child marriages are all committing crimes and are subject to prosecution.

However, there are many loopholes in the current legal system. For example, as per the law child marriages are void unless and until it is unvoided at the age of 20 years. Therefore, a girl marriages at an early age has no legal recourse available to void her marriage until she reaches the age of 20. Further, she loses the right to file a divorce if she has any children because the law requires that individuals cannot have children at the time of initiative legal recourse to void a child marriage¹⁹.

Furthermore, the law does not define free and full consent and the fines and sanctions associated with child marriages are not adequately stringent. For example, a priest or religious leader and matchmakers who knowingly facilitate a child marriages can face imprisonment of one month or a fine of 1,000 Rupees (approx. USD 10). The punishments are further weakened by the broad discretions given to the court to decide the duration of imprisonment and fines for the perpetrators of child marriages²⁰.

In addition to a weak legal system, there is little evidence of the government working effectively to try to prevent child marriage or mitigate the harm that married girls experience. There are few programs to promote public awareness of the problem but it's often the work of NGOs and civil society organisations rather than the state. Law authorities rarely intervene to prevent child marriages, and appear to almost never do so in the absence of a complaint²¹.

Registration of vital statistics such as births and marriages plays a critical role in preventing child marriage and ensuring women and girls have a basis for seeking legal remedies for child marriage. While birth and marriage registration is mandatory in Nepal, in practice, girls are often unable to prove their actual age at the time of marriage and local government officials only sometimes refuse to register under-age marriages, which undermines the implementation of laws prohibiting child marriage. Lack of monitoring and accountability of duty-bearers for their

¹⁹ https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29_25Nov16.pdf

²⁰ Failure of Child Marriage Law and Recent Interventions of the Supreme Court, Sapana Pradhan Malla, FWLD

²¹ In Nepal, Young Girls Are Being Married Off Simply So They Can Eat

<https://womenintheworld.com/2016/09/08/in-nepal-young-girls-are-being-married-off-simply-so-they-can-eat/>

inaction in relation to registration of birth and marriages and other vital statistics are some of the contributing factors to a weak vital stats registration system²².

Recommendations

- Declare marriage below the minimum legal age as void ab initio, meaning it shall have no legal effect under any pretext such as custom, religion, or traditional practices.
- Require free and full consent as a prerequisite to solemnize marriage and penalize forced marriages.
- Revise the statute of limitations for filing a complaint against a child marriage.
- Review and amend the definition of human trafficking in anti-trafficking legislation to explicitly include child marriage for the purpose of trafficking and trafficking for the purpose of child marriage.
- Ensure accountability for law authorities' refusal to file FIRs and failure to undertake criminal investigations upon filing of FIRs by putting in place strict disciplinary action for officials who do not take necessary action.
- Ensure accountability for local duty-bearers' inaction with regards to birth registration and marriage registration by putting place disciplinary action for officials who fail to fulfil their duties.
- Implement awareness campaigns about the legal status of child marriages and its healthful effects on girls' health.

2) Limited Access to Safe Abortion Services

In 2002, the Country Code of Nepal (Muluki Ain) was amended to grant all women the right to terminate a pregnancy with a gestational limit of up to 12 weeks for on request abortion, and up to 18 weeks' gestation if the pregnancy is resulted from rape or incest, and at any gestational age with a doctor's recommendation if the pregnancy poses a danger to the woman's life or her physical or mental health or if there is a risk of fetal abnormality or impairment²³. In addition, the revised law prohibits sex-selective abortions and abortions done without the consent of the woman.

While abortion legalization has led to a decrease in the number of women presenting with severe abortion complications, and it has contributed to a decline in the country's maternal mortality ratio, which fell from 580 maternal deaths per 100,000 live births in 1995 to 190 deaths per 100,000 live births in 2013.²⁴ Nonetheless, unsafe abortions—that is, procedures carried out by an unapproved provider in an unapproved facility, potentially under unsafe and unsterilised conditions and using unsafe methods—remain a major concern in Nepal. According to the 2011 Nepal Demographic and Health Survey (DHS), a quarter of the women who reported having had an abortion in the past five years had had post-abortion complications.²⁵ A 2009 survey of eight districts found that abortion was the third leading cause of maternal mortality, accounting for 7% of maternal deaths.²⁶

²² Unicef, *Ending CHILD MARRIAGE*, https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf, 2014.

²³ "I Need To Terminate This Pregnancy Even If It Will Take My Life": a Qualitative Study Of the Effect Of Being Denied Legal Abortion on Women's Lives in Nepal

Mahesh Puri-Divya Vohra-Caitlin Gerdts-Diana Foster - *Bmc Women's Health* - 2015

²⁴ Abortion Incidence and Unintended Pregnancy in Nepal

Puri -Singh -Sundaram -Hussain -Tamang -Crowell - *International Perspectives on Sexual and Reproductive Health* - 2016 <https://www.guttmacher.org/journals/ipsrh/2016/12/abortion-incidence-and-unintended-pregnancy-nepal>

²⁵ Ibid.

²⁶ Ibid.

There are many barriers to women and girls' accessing safe, legal abortion, including lack of awareness of the availability and location of services, lack of transport to approved facilities, gender norms and expectations, and power dynamics within the family unit that hinder women and girls' decision-making ability with regards to their reproductive choices. Further, abortion is considered a sin in Nepali culture, and women and girls continue to face stigma and fear of judgement from their partners/husbands, family members, and even abortion services providers.²⁷ Adolescent sexuality is highly stigmatised which prompts young women, especially unmarried young women and girls, to keep it secret may cause many women to go to unqualified providers.²⁸

Furthermore, there are numerous logistical barriers for access to safe abortion services for women and girls. Authorised abortion facilities are far and few in the remote regions of the country, and require women and girls to travel long distances to access safe abortion services. The direct and indirect costs of these long-distance travel may hinder women from accessing abortion services from a skilled service provider.²⁹ RHRN Nepal conducted research on barriers to safe abortion access in Nepal and various interesting stories were collected. In one instance, a woman had borrowed a loan to cover for travel for safe abortion services, which took her another two years to be able to return it. Another woman from semi-urban area knew about safe abortion, but was hesitant to go to the service provider due to the stigma, and risked her life with unsafe abortion. For a woman in rural part of Nepal, abortion is not a choice because family planning services is inaccessible and her husband is against using family planning. So, she ends up using abortion as a family planning method.

In 2009, Nepal's Supreme Court ordered the government to ensure that all women, regardless of ability to pay, have access to safe abortion services; however, the government has not yet implemented an effective mechanism through which to provide cost-free abortion services for poor and marginalized women, and fees are often prohibitively high.

Recommendations

- Safe abortion services should be promoted through a rights-based approach.
- The government should implement innovative awareness raising and community sensitisation campaigns to increase knowledge about legal status of abortion and to address abortion stigma.
- The Government should include provision for stigma free and youth friendly free contraceptives, safe abortion and post abortion care services for all women with a special focus in rural and remote areas.
- The Government should devise appropriate monitoring mechanisms to ensure non judgmental, quality and dignified abortion services are being delivered to women of all reproductive age groups.

3) Rape and Sexual Violence Against Women and Girls

²⁷ "i Need To Terminate This Pregnancy Even If It Will Take My Life": a Qualitative Study Of the Effect Of Being Denied Legal Abortion on Women's Lives in Nepal

Mahesh Puri-Divya Vohra-Caitlin Gerdts-Diana Foster - BMC Women's Health - 2015

²⁸ Ibid.

²⁹ "i Need To Terminate This Pregnancy Even If It Will Take My Life": a Qualitative Study Of the Effect Of Being Denied Legal Abortion on Women's Lives in Nepal

Mahesh Puri-Divya Vohra-Caitlin Gerdts-Diana Foster - BMC Women's Health - 2015

Women and girls have always been prime victim of rape. Right now, Nepal is mourning from the death of 13 year old, Nirmala Pant, who was raped and murdered inhumanly. Nirmala had gone missing on July 26th, 2018, the day when she had gone to her friend's place to take a study book and guavas. She was supposed to reach home early. As she didn't, her mother, Durgadevi had become anxious therefore she had gone to report her daughter's missing case but the police officials were unsupportive and didn't register the case. Nirmala's mother had also gone to the friend's place where her daughter had gone but instead she was scolded by the sister of that friend.

Nirmala's body was found the next day, on July 27, in the sugarcane field in Bhimdutta Municipality-19, Kanchanpur district. The police official were in rush to take the body away, but before they did that, they had washed away the blood stains from her pants and also had washed away blood from her vagina and trampled on the evidence which might have remained.

The recent case of Nirmal Pant, a thirteen year old girl has highlighted this issue ever more as police have failed to catch perpetrators for more than two months now raising questions on their ability and complicating the whole issue.³⁰ Also the statistics shows that the rape cases have been on rise. In year 2016, registered rape cases were 1093 while in 2017, it increased to 1137 rape cases, and in 2018, the number has increased and registered rape cases is found to be 1480³¹. A leading newspaper of Nepal, stated that every month 78 rapes cases occur in Nepal³².

Rape has been an emerging issue in the context of Nepal, either due to increased reporting or due to increase in incidence. However, perpetrators rather being punished have been always on upperhand getting away with crime they have committed. This shows severe gap in policy implementation with law and authorities delaying justice either by delaying the progress of case hearing or by victim blaming. A similar case of victim blaming was found back in 2015 in Bara district of Nepal where six year old girl, Puja Shah was raped and murdered. After the incident, when father of child went to seek help from Chief District Officer, he was instead blamed for not doing a better job of protecting his daughter³³

Rape being an extreme violation of human rights impacts the life of the rape survivor severely. A study conducted by WOREC Nepal, one of the RHRN Nepal members, stated that about 54 percent of survivors were found suffering from mental sickness followed by 21 percent having physical effects in Nepal. In addition to this, there is also a major social impact of rape as people tend to blame the rape survivor for it. The same study also provided an evidence that social impact was seen in 11 percent as a rape consequence in 2016³⁴.

Furthermore, the reporting of sexual cases and rape also warrants attention and remedy. The reporting on sexual violence and Nepal often fall short when it comes to ethical standards and journalistic standards³⁵. With a guidelines on reporting ethics being absent in most newsrooms, the way a story is framed is up to each reporter's own discretion. As a result, insensitive

³⁰ In Nepal, the Rape and Murder Of a 13-year-old Girl Sparks a National Outcry About Elusive Justice
Deepak Adhikari - <https://scroll.in/article/895538/in-nepal-the-rape-and-murder-of-a-13-year-old-girl-leads-to-a-national-outcry-about-elusive-justice>

³¹ FACTSNepal. "Rape Case Statistics in Nepal." Digital image. September 23, 2018.

<https://www.facebook.com/factsnepal/photos/a.601603456529911/2167606396596268/?type=3&theater>.

³² "78 Rapes Every Month". 2018. *My Republica*. <https://myrepublica.nagariknetwork.com/news/78-rapes-every-month/>.

³³ Still Getting Away with Rape in Nepal Subina Shrestha - <https://www.aljazeera.com/blogs/asia/2018/03/rape-nepal-180307134321758.html>

³⁴ Status and Dimensions of Violence against Women , Reality. 2016.

³⁵ Media Coverage of Sexual Violence, The Record Nepal, 2018. Available at: <https://www.recordnepal.com/wire/nepal-media-coverage-of-sexual-violence/>

language towards survivors, use of illustrations and images that reinforce stereotyping of sexual violence remains rampant in media and news coverage of sexual violence and rapes cases.³⁶

Government of Nepal in its newly drafted and approved criminal code in 2017, which came into effect from August 2018, clearly included provisions related to the rape in section 18. The law states series of sub clauses which if violated would result into series of punishment. According to the criminal code, 2017, no person is allowed to force woman or girl to have sex without her consent or even with consent the person is not allowed to have sex if the girl is below 18 years of age. If done so, it will be stated as rape.

In case of rape on girl below the age of 10 years, a jail for 16- 20 years will be sentenced to the perpetrator, while if it is for girl of 10 years or below 14 years, imprisonment of 14- 16 years will be sentenced³⁷.

Despite having multiple legal, policy and programmatic provisions against rape and sexual violence, the redressal systems remains very weak and victims of sexual violence and rape have to often go through multiple layers of barriers. These barriers range from underlying social and structural drivers which influence issues such as gender norms and the perception of male dominance within established institutions (such as the police and the legal profession), to factors more at the level of individual women and girls and their family and community norms. For instance, victims of sexual abuse, violence and rape have cited their own lack of knowledge about where to seek help, as well as their perception that they would be further stigmatized if they sought help. Women commonly expressed a distrust in the ability of support services to provide any redress for them. For the women who did seek support (from a relatively wide variety of services), they then reported problems within the existing systems, including the inordinate length of time required to receive judicial redress, as well as concern that their case would be corrupted by external influences³⁸.

Recommendations

- Government should launch programs to aware general people about existing laws and policies around rape.
- Comprehensive Sexuality Education should be taught effectively at school level to make adolescents and young people aware of the different forms of violence including rape and their consequences.
- Government needs to strictly bring existing laws and policies into action and monitor their implementation.
- Awareness among general public regarding newly endorsed civil, criminal and penal code should be done.
- Government should prioritize comprehensive sexuality education and implement it effectively.

4)Discrimination and Social Stigma faced by Women and Girls during Menstruation

In Venkataraman Chandra-Mouli's (WHO) words, "in today's world, if nobody is dying, it is not on

³⁶ Ibid.

³⁷ Criminal Code (2017). Government of Nepal. Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106060/129899/F1095481449/NPL106060%20Npl.pdf>.

³⁸ Tracking Cases of GBV, UNFPA Nepal, 2013. Available at: <https://nepal.unfpa.org/sites/default/files/pub-pdf/TrackingCasesofGBV.pdf>

anyone's agenda. Menstrual problems don't kill anyone, but for me, they are still an extremely important issue"³⁹. This is specially true in Nepali context where women and girls face extreme discrimination, social isolation and stigma during menstruation.

Menstruation, though being a natural phenomenon, girls and women across Nepal face discrimination for five or more days of their period every month. 19.4 percent women and girls, half of them in mid and far western part of Nepal, experience *Chhaupadi*, a social practice of banishing menstruating girls and women to cowshed⁴⁰. The menstruating girls and women go through extreme oppression while staying in this hut - too small for them to be able to stretch their body properly. They are at a higher risk of freezing cold adding to the fact they they are allowed to use a light linen only for covering their body, rape, wild animal attacks, snake bites, suffocation while lighting fire to keep warm from the cold⁴¹ or death⁴². In a 2015 study, 68 percent reported excessive bleeding in cowshed, 52 percent suffered reproductive tract infection, 34 percent had pneumonia and body aches, 17 percent suffered a prolapsed uterus (as a consequence of having to do heavy labour despite the lack of a nutritious diet and adequate rest) and 11.36 percent had suffered anaemia⁴³.

Other forms of discrimination is isolation of menstruating women as menstruation is considered impure in Hindu religion, which makes more than 85 percent of the population. According to Nepal Adolescent and Young people Survey, 7 percent of the girls (aged 10-24) reported that they stayed in dark room and 4 percent stayed in a shed far from the house during their first menstruation⁴⁴. Restrictions in daily activities such as not being allowed to take bath, change clothes, comb hair and enter holy places and dietary restrictions (taboo on consumption of food like rice, curd, milk, lassi, potato, onion, sugarcane etc.), or restriction to touch male member of the family during the menstrual period are found to exist⁴⁵.

Many Nepalese girls (53 percent) have often been found to remain absent from school during menstruation due to lack of proper sanitary facilities such as lock on toilet doors, dustbins, adequate water supply and sanitary pads. If a girl misses 4 days of school every month (due to her period), she may miss 10 to 20 percent of her school days⁴⁶. This further results in missing out on sections of syllabus that do not get covered up later which in turn affects their quality of education⁴⁷.

³⁹ Newsweek (2016). The Fight to End Period Shaming Is Going Mainstream. [Online] Downloaded on 19 September 2019 from www.newsweek.com/2016/04/29/womens-periods-menstruation-tampons-pads-449833.html

⁴⁰ Nepal Multiple Indicator Cluster Survey 2010. Central Bureau of Statistics. (2010). Downloaded from <http://cbs.gov.np/image/data/Surveys/NMICS%202010%20Final%20Report/NMICS-2010-Preliminary-Report.pdf>

⁴¹ SCMP (2018). Nepali women suffocates in smoke- filled 'menstruation hut'. South China Morning Post [Online] Downloaded on September 20 2018 from www.scmp.com/news/asia/south-asia/article/2127647/nepali-woman-suffocates-smoke-filled-menstruation-hut

⁴² Preiss, D. (2016). A Young Woman Died In A Menstrual Hut In Nepal. Retrieved from Goats and Soda -STORIES OF LIFE IN A CHANGING WORLD. [Online] Downloaded on September 21 2018 from <https://www.npr.org/sections/goatsandsoda/2016/11/28/503155803/a-young-woman-died-in-a-menstrual-shed-in-nepal>

⁴³ Joshi LR. (2015). Chhaupadi Pratha: Sociocultural Violence against women in Far western region of Nepal. JNEPHA,6-7-6,22-32

⁴⁴ NAYS (2011). Nepal Adolescents and Youth Survey. Ministry of Health and Population. Available at <https://nepal.unfpa.org/sites/default/files/pub-pdf/NepalAdolescentandYouthSurveyHighlights%282%29.pdf>

⁴⁵ Sapkota, D., Sharma, D., Pokharel, H., Budhathoki, S. S., & Khanal, V. K. (2013). Knowledge and practices regarding menstruation among school going adolescents of rural Nepal. *Journal of Kathmandu medical college*, 2(3), 122-128.

⁴⁶ Oster, E., & Thornton, R. (2009). Menstruation and education in Nepal: National Bureau of Economic Research.

⁴⁷ Pradhan, A. (2016). Is menstrual hygiene and management an issue for adolescent school girls? A Comparative Study of Four Schools in Different Settings of Nepal. Nepal: Water Aid; 2009.

About three out of four girls use rags as the primary absorbent during menstruation. Limited availability of sanitary pads and its high cost hinders girls from using it⁴⁸. Moreover, most of the pads are imported in Nepal, that are subject to 30 percent import tax, and 13 percent sales tax making them unaffordable for women and girls.

In a 2005 judgment, the Supreme Court declared the practice of Chhaupadi to be a violation of women's rights. The Court directed the government to take action to combat the practice. In response, the Ministry of Women developed a "Chhaupadi Practice Elimination" Directive in 2007. However, the directive was not duly implemented as there is not a single case of punishment, fine or reprimand for the perpetrator⁴⁹. Infact, between 2006 and 2016, eight women died in Chhaupadi in Accham district itself⁵⁰.

In 2017, Nepal passed a Criminal Code that criminalizes Chhaupadi or any other forms of discrimination during menstruation. Article 168 states that anyone should not conduct or compel others to conduct any discriminatory behavior to a menstruating women, and if does will be subject to three-months jail sentence or a 3,000 rupee (US\$30) fine or both.⁵¹

But authorities face an immense challenge in implementing the new law when it came into effect in August⁵². On one hand, the women and girls are not aware about the law, and even if they are they will not be able to seek legal and care support due to family dynamics and power relations within the families and community.

Recommendations

- Formulate a national policy on MHM including its Plan of Action to ensure awareness, accessibility and informed choice of every girl and women towards managing their menstruation.
- Make every girls and women aware about the new law against menstrual discrimination, and its strict implementation.
- Remove tax on sanitary pads as luxury goods to make sanitary pads affordable and accessible to all women and girls
- Make every schools menstrual health friendly by improving infrastructures and girls friendly toilets at schools and improving perception towards menstruation among students and teachers.

⁴⁸ Karki, K. B., Poudel, P. C., Rothchild, J., Pope, N., Bobin, N. C., Gurung, Y., Basnet, M., Poudel, M., & Sherpa, L. Y. (2017). SCOPING REVIEW AND PRELIMINARY MAPPING Menstrual Health and Hygiene Management in Nepal (pp. 1-96)

⁴⁹ Aljazeera (2014). Nepal's menstrual exiles. [Online] Retrieved on September 20 2018 from <http://www.aljazeera.com/indepth/features/2014/02/nepal-menstrual-exiles201423131149488509.html>

⁵⁰ Preiss, D. (2016). A Young Woman Died In A Menstrual Hut In Nepal. Retrieved from Goats and Soda -STORIES OF LIFE IN A CHANGING WORLD. [Online] Downloaded on September 21 2018 from <https://www.npr.org/sections/goatsandsoda/2016/11/28/503155803/a-young-woman-died-in-a-menstrual-shed-in-nepal>

⁵¹ Criminal Code (2017). Government of Nepal. Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106060/129899/F1095481449/NPL106060%20Npl.pdf>.

⁵² SCMP (2018). Nepali women suffocates in smoke- filled 'menstruation hut'. South China Morning Post [Online] Downloaded on Spetember 20 2018 from www.scmp.com/news/asia/south-asia/article/2127647/nepali-woman-suffocates-smoke-filled-menstruation-hut