

2022

**STRATEGIC PLAN FOR
DECRIMINALIZATION
OF ABORTION IN
NEPAL**

Introduction

Abortion in Nepal was criminalized in any circumstances prior to 2002. It was a denial of right to choice and reproductive health rights. The maternal mortality rate was very high with 539 deaths among 100,000 live births and 50% of them were due to unsafe abortion. Unsafe abortions led to complications sometimes resulting in septic infertility.

Many cases where only woman was penalized for opting abortion as a choice were quite evident during the period. Out of total women who were criminalized and imprisoned, 20% of them were due to abortion related offence and among the women imprisoned due to abortion, 47.36% were married, followed by 31.58% unmarried women and 10.53% were widowed and separated. No man was imprisoned which highlighted abortion as a gendered issue. Regarding their social context, most of them were illiterate or semi-literate people, financially poor, from rural areas, victims of trafficking and dowry cases. This clearly acknowledged that it is an issue of class and social stratification

The eleventh amendment of country code was passed by the parliament on March 14, 2002 which legalized abortion under certain circumstances:

- ♦ Abortion is legal up to 12 weeks of pregnancy.
- ♦ Abortion is legal up to 18 weeks of pregnancy in case the pregnancy is due to rape or incest.
- ♦ Abortion is legal anytime in case the pregnancy poses danger to the life of pregnant woman or to her physical or mental health or fetus informality.
- ♦ Abortion is criminalized if performed on the basis of the identification of sex/under coercion.

The eleventh amendment received its royal seal on 26th September, 2002. Even after legalization, no services were available due to non-adoption of procedure. Litigation measures were taken to bring abortion service procedure which was finally adopted on 25th December, 2003.

Many women also released who were in prison on charges of abortion and related offences through legal argument and conviction forgiveness. Even though the abortion was legalized in Nepal, many were still unable to access the services due to various conditions and circumstances attached to it. Women who terminated outside the given term would be criminalized even if was induced due to violence or any other extreme causes. However, the landmark decision of Supreme Court on Laxmi Dikta's case led to enhancing Abortion Rights ruling that abortion should not be a part of the criminal law as it concerns life.

In 2017, CRR and FWLD conducted a fact-finding study by reviewing case files of abortion and related cases in 16 districts of Nepal between the year 2011 and 2016. This study revealed that the criminalization of women for undertaking abortion beyond the legal conditions is aggravated by the lack of clarity in the law, biased mindset of law enforcement agencies against abortion as a crime, stigma against women obtaining abortion, and lack of family support and legal representation, resulting in the prosecution of women. Also, confidentiality was also not maintained in most of the cases.



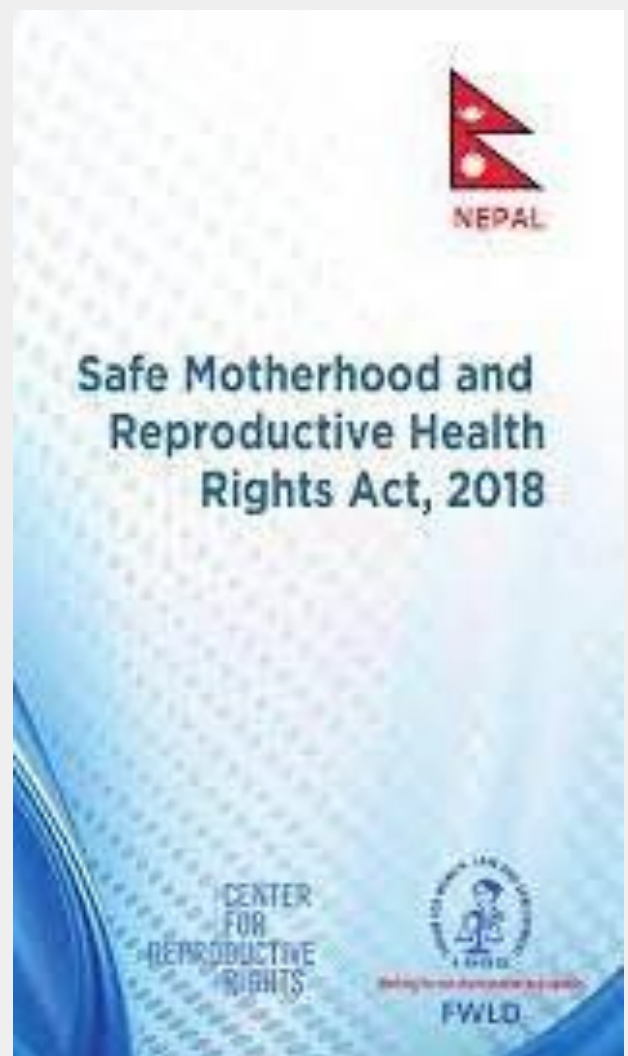
Reproductive Health Right in Nepal: Current Scenario

Constitution of Nepal has guaranteed reproductive health rights to every citizen. Supreme Court has interpreted abortion right as an important component of reproductive health right. Safe Motherhood and Reproductive Health Rights Act was enacted on September 18, 2018. Under the SMRHA, abortion law in Nepal:

- ♦ Pregnant woman shall have the right to seek safe abortion up to 12 weeks of pregnancy.
- ♦ Up to 28 weeks of pregnancy if there is danger to the life of a pregnant woman or her physical or mental health may deteriorate
- ♦ Woman in case the conception is a result of rape or incest

Listed health services provider will provide safe abortion services to the pregnant woman in a listed health institution fulfilling prescribed standards.

Looking over the data of past 3 years, 83 cases were reported on abortion.



UN CEDAW

In 2018, raising its concerns on the criminalization of abortion in Nepal, the Committee on the Elimination of Discrimination against Women (CEDAW) specifically urged Nepal to amend the SMRHR Act to “fully decriminalize abortion in all cases, to legalize it at least in case of risk to health of the mother, in addition to the cases for which it is already legalized, including in cases of rape, incest, severe fetal impairment and risk to the life of the mother, and allocate sufficient resources to raise awareness of safe abortion clinics and services.”

Nepal concluded to be a nation where pregnant women are handed death sentence; no regulation after 28 weeks of provisions of safe abortion, irrespective of circumstances. Fetal non-viability after 28 weeks does not matter. 62% of the unplanned pregnancies end in unsafe abortion and still there are legal cases files regarding abortion in the last year.

38(b): Abortion is criminalized in the State Party, whereas estimations indicate that 62% of unplanned pregnancies end in abortion are conducted clandestinely, endangering the health and life of the mother.

39(b): Amend the Safe Motherhood and Reproductive Health Rights Act to fully decriminalize abortion in all cases, to legalize it at least in case of risk to the health of the mother, in addition to the cases for which it is already legalized, including in cases of rape, incest, severe fetal impairment and risk to the life of the mother, and allocate sufficient resources to raise awareness of safe abortion clinics and services.

A Case Study

A 29 year old woman sought abortion with boyfriend but she was asked to bring her father. After the abortion, she filed for a rape case against the boyfriend and also a case for forced abortion which resulted in a case between the father and the health care provider. During the legal process, they counted the date of abortion to be 13 weeks after conception. Doctor and father were locked up despite signed consent of all the above stakeholders. This clearly showcases that criminalizing of not just the seekers of abortions but also service providers and potential ‘accessories’

Joint Submission in UPR Process

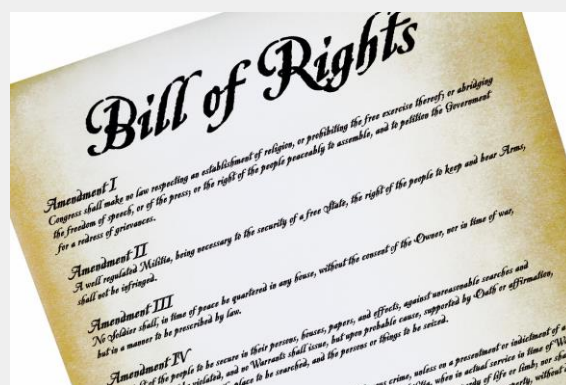
In 2021, during the 37th session of the Universal Periodic Review, Nepal was specifically urged to “decriminalize abortion and concretely protect the rights and sexual and reproductive health of women and girls.” During 47th session of UN Human Right Council on July 8, 2021, Nepal’s UPR 3rd cycle report was adopted by Working Group on Universal Periodic Review.

Nepal has accepted following recommendations relating to sexual and reproductive health:

Recommendation no. 159.135 Decriminalize abortion and concretely protect the rights and sexual and reproductive health of women and girls (recommended by France and accepted by Nepal).

Law, Justice and Human Rights Committee

The law, justice and Human Rights Committee of House of Representative had called a meeting on 26 July, 2021 to discuss about decriminalization of abortion. The Committee has provided strong recommendation to decriminalization of abortion to Ministry of Health, Ministry of Law and Ministry of Women.



Strategies:

No conditionality on abortion is considered as full decriminalization and there is a necessity to agree upon what decriminalization in our specific context means realistically. We need to be strategic about how we lobby and making the definitions of conditionality's lax would be a strategy that works. The Ministry of Health and Population does not prosecute on these grounds and the recommendations as such are that it is a contentious issue and the attitude is unchanging.

However, we believe in the power of law. In many cases, there is recourse in cases of violation, specificity with regards to recourse and specifically addressing the violations that are trying to be addressed at a legal capacity. Secondly, this right is broader than just for person seeking abortion, it is also for service providers who should not be prosecuted for provision of legal services

Abortion is still stigmatized on the ground. Police think of beating up service providers, lawyers are hesitant to represent this cause; everyday person is hesitant to accept it as a not-bad thing.

Denial of legal services to people who are eligible in seeking them is a form of rights violation and problems with implementation of existing laws which needs to be addressed specially in cases of exploited women within the abortion-seeking context. A strategy to address and disprove the opposition narratives and discourse around the curtailing of abortion rights and services is required. Lobbying should be along the lines of the arbitrary nature of the 28 weeks' ultimatum vouching for accessibility towards all people who seek/require safe abortion – prevent criminalization and preventable deaths.

The denial of provisions that are made legally available is a felony but it does not get police coverage/reporting. There are legal advocates who are ready to collaborate on this front to form precedence and lobby for proper implementation of the legal provisions that have been made available.

It is clear that abortions are legal and obligatory on many grounds, the legal skirmishes should not deter from the availability of these services, the opposition makes the issues less clear cut through mechanisms such as bureaucratic jargon, legal obstacles, and many other restrictive regulatory mechanisms deterring from the people seeking abortion services but unsafe abortions still continue to prevail at the same rate and this is universally true (case studies in all of south Asia, eastern Europe, rural America, etc.). Considering these grounds, abortion rights should also form a protection and immunity for service providers as well.

Youth have broad unwanted pregnancies, hence they seek abortions at a higher rate, this should be obvious and not an issue to scrutinize. Abortions occur due to the choice of the person and sometime as a consequence of some kind of violence. It falls under their reproductive right and their choice should be fully respected which means it should be decriminalized in that context completely. Medical Abortion is a simple procedure, equivalent to taking soft painkillers and should be made accessible via the tools of self-care.

Legal issues often revolve around the definitions and the words used in laws. The wording used in laws and regulations should also be strategically chosen. Often there is a lack of clarity with regards to what decriminalization is and it is vital that foremost we be clear about what we mean in this case. Abortion decriminalization first and foremost should be oriented towards removing it from the penal code. As long as abortion exists within the penal code, it will remain a crime that could be legitimately prosecuted, the complication is in the context that two regulations of abortions fall under different jurisdictions and the lack of hierarchy to which applies in what conditions.

Operational Plan

Development of videos:

Building on a Case Story:

Visible Impact plans on developing a video showcasing the case story of a person on how they suffered due to the decriminalization of abortion in Nepal. The video plans to visualize a real case study and showcase the challenges and problems people are facing due to conditionality in abortion law.

Besides the service seeker and their immediate families who had to suffer various consequences, the video will also highlight the challenges from a service provider's lens as well. Further, the experiences and recommendations from a legal expert will also be included.

Documenting Statements:

Visible Impact team plans on developing video messages from influencing personalities with years of experience and expertise in the field of Sexual and Reproductive Health and Rights (SRHR) with focus on Safe Abortion. The video message will mainly highlight the implications of criminalization of abortion in lives of people who seek the service and how we can work in solidarity towards the decriminalization.

Further we plan on broadcasting the developed videos through an established television network.

References

- ♦ **https://fwld.org/wp-content/uploads/2021/06/Decriminalization-of-Abortion-in-Nepal_02June021_-Final-Version.pdf**
- ♦ **https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/DeprivedLiberty/CSO/Center_for_Reproductive_Rights-1.docx**