

From **Base** to **Summit: Abortion** Law Reform in Nepal

by Melissa Upreti

Once notoriously known for having one of the most restrictive abortion laws in the world, Nepal has now become one of the most liberal in handling the issue of abortion. Given the decades of subjecting women with unwanted pregnancies into the harshest conditions, the legal reform on abortion constitutes one of the most important footholds for Nepalese women in the post-democracy era.

In 2002, abortion was legalised on demand in the first trimester and on grounds of rape and incest during the first 18 weeks. The procedure is also allowed any time during a pregnancy in case of a fetal impairment or when the mother's life is in danger.

The previous law declared either causing or procuring the termination of a pregnancy to be an illegal and punishable act. While it contained an exception for terminations performed in pursuit of acts of "benevolence,"¹ this exception remained ineffectual on account of its vagueness. In fact, these provisions resulted in an almost complete ban on abortion in practice.

These long-standing legal sanctions on abortion had developed the stigmatisation of the procedure and those involved in it. They led to the innumerable procedures done underground and incalculable social cost. The ban had a devastating impact on women's health and human rights.

Prior to the amendment, unsafe abortion accounted for up to 50 per cent of all maternal deaths.² Complications from unsafe abortion accounted for almost 60 per cent of all hospital admissions involving women.³ Aside from maternal deaths, routine sentencing and imprisonment of women for allegedly undergoing abortion procedures happened. Many were also charged with the more serious crime of infanticide, which carried a harsh sentence of life imprisonment — the same punishment for murder.⁴

Mounting for Change

These draconian provisions were amended through the adoption of a sweeping anti-discrimination bill, advanced by women's rights activists, who were broadly supported by health experts. The demand for the legalisation of the procedure emerged from the recognition that the criminalisation of abortion is inherently unfair, discriminatory and ultimately, violated women's human rights.

These views were based on two key sets of evidence: medical and legal analyses. Quantitative and qualitative data gathered by public health activists showed that unsafe abortion practices had tragically claimed thousands of women's lives. Meanwhile, the legal analysis demonstrated that women's rights to life, health, non-discrimination, and legal due process, were systematically violated by the government through the implementation of criminal sanctions prescribed by the ban.

Some of the most noteworthy aspects of the historic process of law reform orchestrated and led by Nepalese women include: (1) the creation of strategic alliances between urban activists and grassroots women; (2) strong linkages between national non-governmental organisations (NGOs) and international organisations through consistent networking and information sharing; (3) simultaneous awareness-raising campaigns by national NGOs and grassroots organisations to generate a demand for legal reform; (4) targeted lobbying by such NGOs of government officials for the legal reform; (5) comprehensive technical input provided by NGOs on the draft bill which was informed by international and

comparative norms and standards; (6) national advocacy campaigns to raise public awareness about the harmful impact of the ban across communities and classes through extensive use of radio, television and print media; and (7) on numerous occasions, direct engagement with the members of parliament.

Some Stumbling Blocks

While history was made with the amendment of abortion law in 2002, its implementation has been fraught with challenges. These include the failure of the government to ensure broad access to safe abortion services. Likewise, the law had no mechanisms of accountability in cases when abortion is denied or a woman's need for abortion is exploited by illegal providers.

Many women are also unaware of the specific provisions of the law. Low income, rural women, who comprise the majority of the female population are confronted by formidable barriers to access services since they lack the economic means to procure essential health services.

Laxmi Dhikta, a resident of a remote province in western Nepal, was denied an abortion solely on the ground that she could not pay for the service. As a result, she was forced to carry an unplanned and unwanted pregnancy to term. Dhikta's story is representative of that of countless women across the country. While these women have been granted a legal right, they lack the means to exercise it.

With the support of numerous NGOs and concerned individuals, Dhikta went to the Supreme Court in 2007 and



A Nepalese woman who was imprisoned for allegedly undergoing an abortion.

Photo by the Center for Reproductive Rights

petitioned for the introduction of a comprehensive abortion law. She asked for the establishment of a government fund that can cover the cost of abortion services for women who cannot afford to pay.

The new law also prohibits sex-selective abortion, which is generally a boon in advancing the empowerment of women and girls in a particular cultural context. But there are considerations which necessitate a more balanced and nuanced appreciation of sex-selective abortion in a Nepalese context.

The provision on sex-selective abortion is influenced by the sex-selective practices in India and is meant to pre-empt the misuse of abortion services in Nepal.

Sex-selective abortion is often framed as a form of gender-based discrimination. However, this characterisation belies the complex nature of the issue. Implicit in this assertion is the notion that fetuses have full legal rights—an assertion which has been rejected by many courts.

Furthermore, to assume that the desire not have female children is a ‘sexist’ choice, rooted in disdain for the female sex, as opposed to a ‘sexual’ choice or based on the desire to balance family size is rather presumptuous. Research indicates that 54.1 per cent of Indian women have no specific sex preference, but merely wish to balance their family composition by having both girls and boys.⁵ Thus, while a couple’s decision to create a balanced family may be sex-based, it cannot always be viewed as purely sexist.⁶

There is a pressing need to re-examine the approach to sex-selective abortion, recognising that the real problem may lie not in individual choices but in societal

expectations and presumptions. It is important to realise that any legal restriction on abortion creates the possibility of unsafe abortion. It is imperative for governments to refrain from introducing such restrictions since they could force women to make choices that undermine their health. Therefore, the issue of sex-selective abortion warrants a more nuanced legal approach.

Lessons Learned

These stumbling blocks and the process in general have provided valuable insights for women’s and social movements in Nepal. They are also instructive for countries, where pockets of resistance exist, struggling to break the chains which restrict women’s control of their bodies. These lessons include:

- ◆ Framing issues in terms of human rights can expand the discourse and create new ways for people to connect to an issue, leading to greater understanding and support.
- ◆ Documentation and analysis of human rights violations can constitute a powerful basis for law reform and social change.
- ◆ Strategic alliances across a broad spectrum of national and international groups can help create a pool of diverse resources that can be utilised to undertake a broad range of strategies, at multiple levels, over a sustained period of time.
- ◆ Legal change must be supported by follow-up strategies to ensure continued political support and effective implementation.

Continuing Climb

Despite the challenges to the law’s implementation on the ground, the gains



The decriminalisation of abortion has challenged not only patriarchy but also Hindu assumptions on women.

Photo by Luca Galuzzi, from Wikimedia Commons

decriminalisation of abortion symbolises a potent challenge to the patriarchal norms and Hindu precepts which hold an instrumentalist view of women and their fertility.

made by the women's movement on the issue of abortion are ground-breaking, that they must be must be preserved and strengthened.

The law reform has been an opportunity to galvanise support for women's reproductive rights in general. It has also promoted a multidisciplinary approach to reproductive health issues in Nepal.

In 2006, a National Network for the Reproductive Rights of Women was launched. The network consists of groups who worked together in support of the abortion law reform and those who specialise in research, service delivery, and legal advocacy. Today, these groups are collectively advocating for the introduction of a comprehensive abortion law to ensure women's access to reproductive health services and accountability for the violations of reproductive rights.

The abortion law reform has likewise paved the way for another historic milestone. In January 2007, reproductive rights were recognised as fundamental rights in the interim

constitution. A critical point made by advocates at the time was that the amended abortion law and all the policy work undertaken thereafter, represented a clear affirmation of reproductive rights. The decriminalisation of abortion in Nepal marks a successful attempt in giving legal force to the principle of reproductive self-determination. A constitutional recognition is the next logical step towards giving full legal effect to these principles.

Finally, the decriminalisation of abortion symbolises a potent challenge to the patriarchal norms and Hindu precepts which hold an instrumentalist view of women and their fertility. As in other cultural contexts, women are considered a mere vehicle for producing children, especially male heirs.

The law reform on abortion is thus a positive signal amid the complicated and challenging changes in Nepal's political history. With a more profound recognition of women's rights and a strong front of women's and social movements, the challenges of a political transition are possible to be scaled down. ■

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Endnotes:

- 1 *The risk of criminal liability resulted in this provision having no meaningful practical effect. For further explanation, see Forum for Women, Law and Development and Planned Parenthood Global Partners (2003), "Struggles to Legalize Abortion in Nepal and Challenges Ahead 12" (copy text)*
- 2 *See Center for Research on Environment Health and Population Activities (2000), Women in Prison in Nepal for Abortion: A Study of Implications of Restrictive Abortion Law on Women's Social Status and Health. Kathmandu: CREPHA*
- 3 *See Family Health Division Ministry of Health (1998), Maternal Mortality and Morbidity Study. (copy text)*
- 4 *Center for Reproductive Rights (2002), Abortion in Nepal: Women Imprisoned. New York: CRR.*
- 5 *See Robini Pande and Anju Malhotra (2006), Son Preference and Daughter Neglect in India, Retrieved on 21 January 2008 from International Center for Research on Women <http://www.icrw.org/docs/2006_son-preference.pdf>*
- 6 *See Family Health Division Ministry of Health (MOH) (1998), Maternal Mortality and Morbidity Study 75 (copy text)*