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Women and Abortion Rights in Nepal

Pradeepta Upadhaya

Background

Gender violence causes more death and disability among women aged 14-44 than cancer, malaria, traffic accidents, or even war.

The indirect cost of gender violence to development is extremely high. The negative impact of gender violence on women's reproductive health is only just beginning to be recognised. Domestic and sexual violence is reproductive health problems because they are intertwined with sexuality, fidelity, pregnancy and child rearing. Research suggests that physical and sexual abuse is the one linked to some of the most intractable reproductive health issues of our times: teenage pregnancy, unsafe sexual behaviour and sexually transmitted diseases including infection with HIV.

Reproductive rights constitute an important area having direct correlation and being with gender violence. The "womb" is seen both as a blessing and a curse for women. It stands as major constraint hindering mobility, personal, professional development for controlling politically empowered positions and even to the extent of earning their own livelihood. On the other hand for many women the ability to give birth to children have provided them safety and a sense of a secure marriage. On the contrary the "womb" has increased women's vulnerability to unwanted pregnancies arising from rape and involuntary professions as sex work.

Unwanted pregnancy and abortions is often an outcome of rape. Abortion is extremely dangerous in countries where it is illegal. Throughout the world 75,000 women die from excessive bleeding or infection caused by botched abortions every year, according to the World Health Organisation.

Nepalese Law on Abortion and Infanticide

In Nepal there are no separate acts for dealing with trial and punishment for crimes of abortion and infanticide, nor are there even separate chapters in the national code. Nepalese law declares abortion a crime and prescribes

punishment for the crime. Nepalese law puts a blanket ban on abortion. Intentional act of aborting under any circumstance is illegal and punishable except in cases where an act done with intent of welfare of the pregnant woman; results in abortion or causing abortion or helping to abort are unlawful and punishable. It is evident that even when doing something in the interest of the pregnant women, immunity is given only to an act which results in abortion (i.e. unexpected result) and not to any direct act of aborting, irrespective of the circumstances. Even a medical practitioner cannot intentionally terminate the pregnancy of a woman for health reasons. Because the law of the land does not permit abortion, it simply gives the doctor immunity from punishment in such cases where abortion is the accidental consequence of some other measure (not aborting) taken by the doctor for the pregnant mother's welfare.

If any person performs an abortion on a pregnant woman with her consent causing her to miscarry, both the persons performing the abortion and the woman are sentenced to one year or one-and-a-half years depending on whether the foetus is less than, six months old over six months. However, for a person who performs abortion on a woman without her consent, the punishment ranges from 2 years for a foetus less than 6 months and to 3 years for a foetus over 6 months.

There is a serious anomaly in Nepalese law. If a woman who falls a victim of rape, kills the rapist as a measure of self-defence while being raped or going to be raped or as a revenge immediately after the rape, law immunises her from punishment, whereas the law does not permit her to destroy a pregnancy conceived as a consequence of rape.

Usually pregnant mothers who want to terminate their pregnancies are either married women who have conceived through adulterous relationship, or widows who have conceived through relationship or women who have conceived through incestuous relationship. If married women conceive through adulterous relationship which often happens usually when their husbands go abroad and do not return after a long period, then the problem starts. If such relations should result in a baby, the women would be driven out of their homes, forfeit all rights in property find doors closed for them even in their paternal homes and be treated with contempt and completely boycotted by the society. Terrified with this prospect, these women desperately terminate their pregnancies through abortion thereby committing a crime and if they fail in their attempts and give birth to babies they often resort to the terrible act of killing their own newborn babies or abandon them to be even exposed to death.

Relationship of a widow with someone of her liking is not regarded unlawful in Nepalese law, yet a widow's relationship with someone is looked up with

contempt by the society. A widow of a tender age is always looked with suspicion and fear that she may one day elope with somebody or contract sexual relationship with someone. Thus hated and treated with contempt from all sides she becomes vulnerable towards anyone who shows sympathy or love towards her and falls a prey to his lust. Even if a man is of affectionate nature, he, being afraid of disapproval by the society of his relations with a widow, hesitates to own her. As a result the unfortunate woman, hated and looked with contempt from everyone and now being abandoned by her lover, tries either to commit suicide or resort to crime of abortion or killing her own baby.

Even if any unmarried girl becomes pregnant through relationship with some man, society does not take it as an ordinary phenomenon, but begins to hate her and our social environment obliges her to try every possible means to hide her pregnancy out of public shame. Out of desperation she tries to abort her foetus, failing which she even may resort to the crime of killing or deserting the newborn baby.

As regards the punishment to the mother for killing her, newborn baby or the punishment for infanticide is, as stipulated in the Chapter "On destruction of Life," is the punishment for homicide. The act of killing a newborn baby is certainly a crime. However the existing system of punishing the offender of this crime with the same maximum punishment for homicide irrespective of the circumstances in which the crime is committed is not just. Sec. 18 of the chapter states that if a mother abandons a newborn child and it dies of exposure, the mother is to be punished as a murderer. The crime of cruelly murdering a newborn baby and the crime of a mother who deserts her new-born baby somewhere or abandons her baby at the place where she has delivered resulting in the death of the new-born baby are not crimes of the same footing, but in both cases, the existing law punishes the offender for homicide, the punishment for which is life sentence plus confiscation of her entire property. If the child does not die and is found by somebody, the punishment to the mother for deserting the child is an imprisonment of 4 years. Although the crime committed is the same act of desertion done by the unfortunate woman who is sentenced to life imprisonment as a result of the abandoned child's death.

As was revealed in two separate studies made about a decade ago by two different organisations, IDS and Women's Legal Services Project, there were a little less three hundred women prisoners lodged in various prisons of Nepal. They found that most of them (nearly two-third according to WLSP finding) were convicted and punished for crimes of abortion or infanticide. In reality a few hundred women prisoners constitutes only a negligible portion of the total female population of the country, but the shocking thing is the fact that two-thirds of them are languishing in prisons convicted or accused of committing

abortion or infanticide. It is evident that the crimes are the results of unwanted pregnancies. It is also evident that the crimes of killing newborn babies are committed after failure in their attempt to abort pregnancies, resulting in the birth of babies. Hence if abortion laws had been liberal the crimes of infanticide would have been contained to a great extent.

A ray of hope beamed when His Majesty Government presented a bill, which tried to liberalise the laws on abortion and to prescribe more, rigorous punishment for crime of rape. The bill sought to permit abortion on the certain grounds, such as (i) within twelve weeks of pregnancy, on mutual consent of the pregnant mother and her husband (ii) within eighteen weeks of such pregnancy which is conceived through rape or incestuous relations (iii) if the medical expert recommends for abortion on medical grounds.

The bill also prescribes more rigorous punishment to the rapist, which would restrain the crime to a considerable extent. The bill also suggests some change in its procedure for trial of the rape case with a view to save the victim from embarrassing situation in the trial proceedings. But unfortunately the bill could not get through that session. A number of amendments were moved in the bill and it is still pending in the House.

Regarding laws on abortion, if the bill presented in the House is passed and turned into an Act, it will ameliorate the suffering of women to a considerable extent. Similarly if the suggested amendment in laws to punish rape is passed by the House, it will relatively improve the situation. It is equally necessary that the existing laws prescribing punishment to a mother who kills her newborn baby should be amended. It is to be borne in mind that a mother who kills her own baby is not a murderer with heinous criminal attitude, but is an unfortunate woman who has, out of desperation compelled by extra-ordinary circumstances resorted to the crime. Although she has a criminal intention in her act, the intention is different from that of a murderer and should not be awarded the extreme punishment meted out to a murderer. Through liberalisation of laws on abortion, making punishment for abortion and infanticide less rigorous and prescribing more rigorous punishment for a rapist, we can hope that violence against women will be restrained to a considerable extent.