

GENDER AND JUSTICE

**A Compilation of Research
Papers for Inclusive Societies**

2026

Justice and Rights Institute-Nepal (JuRI-Nepal)

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Justice and Rights Institute-Nepal (JuRI-Nepal)

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Foreword

Justice and Rights Institute Nepal (JuRI-Nepal) implemented a **Legal Mentorship Programme** in 2025 to strengthen capacity of law students, particularly from marginalised backgrounds, including female students and meaningfully engaging them in advancing the rule of law, gender equality, human rights, and social justice, with the support from UNFPA and in collaboration with National Law College. This programme supported twenty students, through mentorship from four legal experts, to undertake legal and policy research and produce scholarly papers focused on key thematic areas, including gender equality and social inclusion (GESI), gender-based violence (GBV), sexual and reproductive health and rights (SRHR), and harmful practices.

Building on this initiative, JuRI Nepal undertook peer review and published these papers in 2026 to enhance their academic rigor and disseminate them to a wider range of stakeholders as a knowledge resource and evidence base for policy and legal reform. It is with great pride that I present this publication, which brings together a rich collection of socio-legal scholarship by emerging law professionals, reflecting a profound commitment to advancing justice, dignity, and human rights in Nepal.

At a time when gender justice, GESI, and human rights remain central to Nepal's national discourse, these contributions offer timely and critical insights by bridging legal frameworks with lived realities and highlighting persistent gaps between formal guarantees and their practical realization, particularly for women and marginalized communities. The authors move beyond doctrinal analysis to examine the structural, cultural, and institutional barriers that hinder access to justice, underscoring the importance of context-responsive and transformative legal reform.

Recognizing the importance of investing in young scholars, creating platforms for their voices, and their vital role in strengthening democratic values and the rule of law, JuRI Nepal remains committed to empowering the next generation of legal professionals.

I extend sincere appreciation to all authors for their dedication and intellectual engagement, and acknowledge the collaboration and guidance of Dr. Ram Krishna Timalsena, Founding Chair and Executive Director of National Law College. My thanks go to the mentors—Advocates Rastra Bimochan Timilsina, Sharada Timilsina, Trishna Neupane, and Seema Dhami—and to the peer reviewers, Dr. Bidhya Chapagain and Mr. J.B. Biswokarma.

I am grateful to UNFPA for making this initiative possible, particularly Mr. Samir Ghimire, Programme Analyst (Gender and Human Rights), and Ms. Reshmi Sunar, Programme Associate (Diversity and Inclusion), for their continued guidance and support. I also thank the editorial team—Dr. Bidhya Chapagain, Mr. J.B. Biswokarma, Mr. Tej Sunar, and Advocate Bishnu Prasad Pokhrel—for their diligent efforts in bringing this publication to fruition.

JuRI Nepal looks forward to using this publication as an evidence-based resource to strengthen its advocacy for legal and policy reform, advance GESI, promote SRHR, and address GBV and harmful practices in Nepal. I hope that this publication will serve as a valuable resource for policymakers, practitioners, scholars, and students, and contribute to informed dialogue and sustained action towards a more just and inclusive society.

Tanuja Basnet
Chairperson
JuRI-Nepal



Message from UNFPA Representative

UNFPA in Nepal is pleased to support this publication, developed in partnership with JuRI-Nepal and in collaboration with National Law College. This volume brings together a timely collection of socio-legal research on gender-based violence (GBV), sexual and reproductive health and rights (SRHR), harmful practices, and gender equality and social inclusion (GESI), all of which remain central to Nepal's journey towards equity and justice.

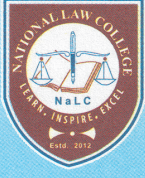
This compilation reflects the voices and analytical contributions of emerging law students who have engaged with complex socio-legal realities. Their research highlights persistent gaps between legal and policy frameworks and the lived experiences of individuals, especially women, young people, and marginalized communities. These are areas at the core of UNFPA's mandate, and this work makes an important contribution to advancing gender equality, youth empowerment, SRHR, and the elimination of harmful practices.

At UNFPA, we believe that lasting change requires not only strong legal provisions, but also critical inquiry, inclusive dialogue, and sustained engagement. Initiatives such as this mentorship programme play an important role in nurturing a new generation of legal professionals committed to human rights and social justice.

We extend our sincere appreciation to JuRI-Nepal for its leadership, to National Law College for its collaboration, and to the mentors and students for their dedication and thoughtful engagement.

It is our hope that this publication will serve as a valuable resource for policymakers, practitioners, and advocates, and contribute to building a more just, inclusive, and equitable society.

Sriram Haridass
Representative a.i.
UNFPA in Nepal



NATIONAL LAW COLLEGE (NaLC)

(Affiliated to Tribhuvan University)



Few words

National Law College is pleased to collaborate to present this publication, in collaboration with JuRI Nepal with the support from UNFPA. It reflects our shared commitment to advancing the rule of law, human rights and social justice through legal mentorship programme in Nepal. The legal mentorship programme, implemented in 2025 in collaboration with JuRI Nepal, provided an important platform for experiential learning. Twenty law students—approximately 70 percent of them were women—were mentored by experienced faculty members and legal professionals to undertake research on critical themes such as gender-based violence (GBV), sexual and reproductive health and rights (SRHR), harmful practices, and gender equality and social inclusion (GESI). We commend our students for their dedication and efforts.

Through this process, students not only deepened their theoretical understanding but also developed analytical and ethical capacities essential for addressing complex socio-legal challenges. Further, they produced research papers based on the research work. This achievement would not have been possible without the dedicated guidance of our faculty members—Mr. Rastra Bimochan Timalsena, Assistant Principal, Ms. Sharada Timalsena, Deputy Director Advocate Ms. Seema Dhama and Ms. Trishna Neupane, B.A.LL.B Coordinator who played a central role in mentoring and supporting the students throughout the programme. We are equally grateful to government institutions and agencies for their cooperation in providing data and information to support student research.

The subsequent peer review and publication of these papers in 2026 have further enhanced students' knowledge in scholarly writing and publication. For National Law College, this collaboration has been particularly valuable in providing students with practical research, academic writing, and publication opportunities.

I extend our sincere appreciation to JuRI Nepal for its leadership and partnership in designing and implementing this programme, and to UNFPA for its continued support. I acknowledge the contributions of the peer reviewers and the editorial team in ensuring the quality of this publication.

This publication will inspire continued dialogue and action towards a more judicious and inclusive society.

Dr. Ram Krishna Timalsena
Executive Chairman/Founder Principal

Editorial Note

We are pleased to introduce this edition, which collectively presents scholarly contributions examining gendered power dynamics, human rights, and social justice within health, legal, and social systems in Nepal. The volume is dedicated to advancing critical, context-responsive scholarship on sexual and reproductive health and rights (SRHR), gender-based violence (GBV), gender equality and social inclusion (GESI), and harmful practices (HPs). Collectively, these contributions offer an integrated analytical lens for promoting equity and addressing the structural barriers that continue to impede the empowerment of marginalised communities.

The edition brings together twenty articles authored by law students, each exploring the intersections of law, policy, and governance. By bridging the statutory frameworks with lived social realities, the authors provide nuanced insights into how rights are conceptualised, contested, and operationalised in the contemporary Nepali context. The contributions demonstrate both doctrinal engagement and socio-legal sensitivity, highlighting the dynamic relationship between normative guarantees and implementation challenges.

The articles addressing SRHR and GBV span a wide thematic spectrum. Aparna Upadhyaya examines adolescents' access to SRHR, analysing the disjunction between progressive legal frameworks and lived experiences, and emphasising the importance of youth-centred and inclusive policy implementation. Aakriti Shrestha analyses the impact of superstitious healing practices on the right to health, underscoring the need for culturally responsive reforms and strengthened healthcare governance. Bhaj Narayan Regmi interrogates the legal marginalisation of men within domestic violence and sexual offence legislation, identifying definitional and interpretative gaps and advocating for gender-responsive yet equitable reform. Mastana Koirala explores psychological abuse and coercive control, highlighting the invisibility of non-physical forms of domestic violence and the need for strengthened enforcement and psychosocial support systems. Rakshya Jaishi investigates access to SRHR in rural communities, identifying structural and socio-cultural barriers and proposing targeted policy interventions. Rohika K.C. examines assisted reproductive technologies (ART) and reproductive autonomy, highlighting regulatory gaps and advocating for comprehensive, rights-based legislation supported by independent oversight and integration with public health systems. Samangkita Dhakal addresses conversion practices affecting LGBTQIA+ individuals, highlighting violations of bodily autonomy and the urgency of legislative reform. Shrija Poudel investigates SRHR in the context of female incarceration, revealing systemic barriers in prison healthcare system despite constitutional protections. Sujana Subedi investigates image-based sexual abuse, exposing its gendered and technological dimensions and calling for victim-centred legal reform. Susmita Ghimire critically examines abortion law, demonstrating how conditional legal frameworks and socio-cultural barriers constrain reproductive autonomy and safe access to services.

The contributions addressing GESI and harmful practices further expand the analytical scope of this volume by interrogating entrenched social norms, discriminatory structures, and governance deficits that perpetuate exclusion and inequality. Despite constitutional commitment to non-discrimination, gendered and identity-based inequalities persist across both public and private spheres. Women and girls continue to face menstrual restrictions and everyday humiliation across rural and urban contexts. Purnima Chand highlights that over 70 percent of women and girls in Sudurpaschim Province experience such restrictions, while Anupa Timilsina analyses the persistence of “invisible” Chhaupadi practices within educated, urban households. Rojina Dawadi examines severe forms of gender-based violence in South Asia, including honour killings, female foeticide, and female circumcision, while Sonina Neupane attributes their persistence to sexism, unequal power relations, limited awareness, and weak law enforcement. Ganesh Kumar Jha further identifies procedural and practical barriers in the enforcement of alimony laws, reflecting broader gaps in access to justice.

The volume also examines economic and structural inequalities linked to gender-based violence. Sambida Wagle highlights the persistence of gender-based violence and discrimination even among educated and economically independent women, while Suvakshya Thapa analyses wage inequality and structural violence in the informal labour sector. Karma Chhiring Tamang explores how the gig economy reproduces gendered exploitation within emerging digital labour systems. Intersectional dimensions are addressed by Puspa Khadka, who documents the marginalisation of Dalit women representatives in local governance, and Subin Paudel, who examines the continued struggle of

queer communities for recognition and dignity amid limited state accountability. Collectively, these contributions underscore the persistent gap between legal guarantees and lived realities of equality and inclusion.

Methodologically, the volume reflects a diverse and rigorous approach. The authors employ a combination of doctrinal legal analysis, policy review, comparative inquiry, and empirical research methods, including surveys, interviews, and focus group discussions. The integration of qualitative and quantitative evidence with legal analysis enables a comprehensive examination of both statutory design and implementation gaps.

Across the contributions, several recurring themes emerge: the persistent gap between constitutional and legal guarantees and practical realisation; the influence structural and socio-cultural barriers; and the need for transformative legal and policy reform. Despite thematic diversity, the articles converge on a shared normative premise: that justice must be substantive, inclusive, and responsive to intersectional inequities. The volume thus offers both critical reflection and pragmatic pathways for strengthening the realisation of rights in Nepal.

We extend our sincere appreciation to the contributing authors and peer reviewers for their rigorous scholarship and thoughtful engagement. We invite readers to engage critically with the analyses presented and to reflect on their implications for legal reform, policy development, and institutional practice in advancing SRHR, preventing GBV, and promoting social justice.

Taken together, SRHR, GBV, and GESI constitute an integrated framework for understanding the interconnections between health, rights, violence, discrimination, and social exclusion. This framework emphasises transformative justice, the reduction of structural inequities, and the empowerment of individuals and communities, particularly those historically marginalised on the basis of gender, sexuality, caste, disability, or other intersecting vulnerabilities.

Table of Contents

Chapter One - Gender Based Violence and Sexual and Reproductive Health Rights

Superstitious Healing and the Denial of Healthcare Rights in Nepal: Constitutional Guarantee, Structural Inequality, and Public Health Reform <i>Aakriti Shrestha</i>	3
From Policy to Practice: A Rights-Based Rural–Urban Analysis of Adolescent Sexual and Reproductive Health Rights in Nepal <i>Aparna Upadhyaya</i>	15
Legal Disadvantages Faced by Men in Nepal: With Special Reference to Domestic Violence and Sexual Offence Laws <i>Bhaj Narayan Regmi</i>	26
Psychological Abuse and Coercive Control in Domestic Violence against Nepali Women: Experiences, Legal Responses, and Policy Implications <i>Mastana Koirala</i>	36
Bridging Legal Frameworks and Ground Realities: Access to Sexual and Reproductive Health Rights in Rural Nepal <i>Rakshya Jaishi</i>	47
Reproductive Rights in Transition: Navigating Emerging Assisted Reproductive Technologies and Reproductive Autonomy in Nepal <i>Rohika K.C.</i>	59
Conversion Practices and the Violation of Bodily Autonomy in the LGBTQIA+ community: A Socio-Legal Study in Nepal <i>Samangkita Dhakal (Sam)</i>	70
Behind Bars, Beyond Rights: Systematic Denial of Sexual and Reproductive Health Rights among Female Prisoners in Nepal <i>Shrija Poudel</i>	81
Women, Technology, and Abuse: Examining the Socio-Legal Dimensions of Image-Based Sexual Abuse in Nepal <i>Sujan Subedi</i>	92
Decriminalized in Principle, Criminalized in Practice: Abortion Laws and Their Limits in Nepal <i>Susmita Ghimire</i>	103

Chapter Two - Gender Equality, Social Inclusion and Harmful Practices

Performative Modernity and Invisible Hut in Educated Homes: The Modern Face of Chhaupadi <i>Anupa Timilsina</i>	117
Nepal's Alimony Law: Gender Impact of a Blanket Approach <i>Gunesh Kumar Jha</i>	124
Gig Economy in Nepal: Gender-Based Discrimination in Ride-Sharing Platforms in Kathmandu Valley <i>Karma Chhiring Tamang</i>	130
Breaking the Cycle: Analyzing Nepal's Criminal Approach to Menstrual Discrimination <i>Purnima Chand</i>	139
Elected but Excluded: A Case Study of Dalit Women 's in Helambu Rural Municipality <i>Puspa Khadka</i>	149
Law Versus Custom: Honor Killing, Female Foeticide, and Circumcision in South Asia <i>Rojina Duwadi</i>	158
Gender-based Violence Against Educated, Independent Women <i>Sambida Wagle</i>	167
Rape: A Severe Crime Rooted in Patriarchal Power Structures <i>Sonika Neupane</i>	175
Human Dignity for Queer Advocacy <i>Subin Poudel</i>	184
Unequal Wages: Structural Discrimination against Women <i>Suvekshya Thapa</i>	194

Gender Based Violence and Sexual and Reproductive Health Rights

Superstitious Healing and the Denial of Healthcare Rights in Nepal: Constitutional Guarantee, Structural Inequality, and Public Health Reform

Aakriti Shrestha*

Abstract

Superstitious healing practices remain deeply embedded within Nepal's socio-cultural landscape, significantly influencing health-seeking behaviour despite constitutional guarantees of the right to health. This article examines how reliance on such practices hamper the realisation of the constitutional right to health. Adopting a mixed-methods approach, the study combines doctrinal analysis of constitutional and statutory provisions with empirical data derived from a survey of 100 respondents across urban and rural settings, supplemented by a semi-structured interview with a medical professional. The findings reveal a substantial disconnect between legal guarantees and practical healthcare utilisation. Approximately 42 percent of respondents reported consulting traditional or faith healers prior to seeking biomedical care, while 41 percent acknowledged delays in accessing hospital services as a consequence of superstitious practices. Although most participants recognised the risks associated with such harmful practices, they identified education, public awareness, and improved access to affordable healthcare as key actors in reducing reliance on superstition. The findings demonstrate a persistent gap between the constitutional recognition of healthcare rights and the realities of healthcare access and utilisation. It concludes that meaningful realisation of the right to health requires integrated reform, including strengthened legal enforcement, improved health system capacity, enhanced community engagement, and culturally sensitive policy interventions that align biomedical services with local belief systems.

Keywords: *Right to health, superstitious healing, public health law, faith healers, health equity*

Introduction

The constitutional recognition of health as a fundamental right represents a transformative milestone in Nepal's legal development. Article 35 of the Constitution of Nepal (2015) guarantees every citizen the right to free basic health services and equal access to healthcare. This provision aligns Nepal's domestic legal framework with international human rights standards, particularly Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to the highest attainable standard of physical and mental health. In normative terms, the constitution reflects a strong commitment to health equity and state accountability.

Despite these formal guarantees, the reality of healthcare access reveals persistent structural and cultural impediments. The health landscape of Nepal represents a complex intersection of traditional belief systems and modern medical science. In many communities, individuals first consult *dhami jhankri*, engage in *jharphuk* rituals, or seek guidance from astrological and spiritual healers before approaching formal medical institutions. Illness is often managed through ritual assistance by *dangris*, who help coordinate ceremonies, procure ritual materials, and support spiritual healing practices (Ghimire et al., 2025). Furthermore, illnesses are frequently attributed to supernatural causes such as evil spirits, curses, or divine wrath, beliefs that remain deeply embedded in several regions, particularly within rural

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* I would like to express my sincere gratitude to Advocate Sharadha Timalsena for her mentorship and scholarly guidance throughout the research process.

and marginalised communities.

These practices are intertwined with longstanding cultural traditions and may provide a sense of communal identity and psychological reassurance. However, when ritual interventions replace or delay evidence-based treatment, they may undermine the effective realisation of the constitutional right to health. Access to modern healthcare may also be constrained in contexts where traditional authority structures exert substantial social influence over health-related decision-making.

For the purpose of this study, “superstitious healing” refers to reliance on spiritual, ritualistic or magical practices for the to the of illnesses, generally rooted in traditional beliefs and cultural customs rather than evidence-based medical care. Historically, many ancient civilisations including those of Mesopotamia, Egypt, Crete, and India, attributed disease to supernatural forces and sought cures through magic, divination, and temple-based healing practices (Rao, 1978). In the past, medicine was frequently practiced as an art closely intertwined with philosophical and religious traditions (Uwayezu Donat et al., 2022). Owing to their deep cultural and religious significance, such practices may discourage or delay individuals seeking biomedical treatment, thereby indirectly limiting the realisation of their right to healthcare.

This article advances three interrelated arguments. First, the persistence of superstitious healing reflects structural inequities including poverty, limited infrastructure, weak institutional enforcement, and low health literacy rather than merely the continuity of cultural traditions. Second, the denial of healthcare rights often occurs indirectly through social pressure, misinformation, and systemic barriers rather than through explicit state refusal. Third, bridging the gap between constitutional guarantees and lived realities requires a multidimensional strategy that integrates legal enforcement, health system strengthening, and culturally responsive engagement.

To examine these claims, the study adopts a mixed-method socio-legal research design combining doctrinal legal analysis with empirical inquiry. The doctrinal component evaluates constitutional provisions, statutory legislation, and policy frameworks governing health rights and harmful traditional practices. Primary legal sources include the Constitution of Nepal (2015), the National Penal Code (2017), and the Public Health Service Act (2018), alongside relevant policy instruments and international human rights standards. These materials were analysed through normative legal interpretation in order to assess the scope of state obligations, enforcement mechanisms, and existing regulatory gaps.

Complementing the doctrinal analysis, empirical data were collected through a structured survey of 100 respondents aged 20–35 from both urban municipalities (Kathmandu Valley) and rural or remote districts (Humla, Jumla, Bajhang, and Baitadi). The survey instrument examined four principal dimensions: exposure to or experience with superstitious healing; patterns of health-seeking behaviour; perceived factors sustaining superstition; and proposed measures for strengthening realisation of the right to health. Responses were collected through online distribution and analysed using descriptive statistics and thematic interpretation. Although the sample size limits broad generalisability, the findings provide indicative insights into contemporary attitudes across diverse geographic and socio-cultural contexts.

To contextualise the quantitative findings, a semi-structured interview was conducted with a practicing nurse to capture frontline perspectives on patient decision-making, enforcement challenges, and the feasibility of engagement between biomedical practitioners and traditional healers. This qualitative component provided practical insights into institutional constraints affecting healthcare delivery.

The study is subject to several limitations. The relatively modest sample size constrains statistical inference, and reliance on self-reported data may introduce response bias. Rural representation, although included, may not fully

capture the experiences of the most geographically isolated communities. Additionally, the qualitative component reflects a limited number of professional perspectives rather than a comprehensive institutional analysis. Nevertheless, the methodological triangulation employed in this study enhances the analytical rigor of the findings.

By integrating constitutional analysis with empirical evidence, this article situates superstitious healing within the broader framework of public health law and human rights in Nepal. It seeks to illuminate how culturally mediated health-seeking practices intersect with state obligations and how structural reform may transform constitutional recognition into substantive realisation of the right to health.

Traditional Healing, Mental Health, Social Inequality, and Legal Frameworks Governing Harmful Practices

Cultural and Historical Foundations of Healing Practices

Anthropological scholarship has long examined the origins and social functions of religion, magic, and shamanistic practices in human societies. Early anthropologists attempted to explain how supernatural beliefs emerged and how they function within social structures. Edward B. Tylor proposed that “*animism*”, the belief in spirits and supernatural beings, represents one of the earliest forms of religion and forms the foundation of many religious and healing traditions (Rai, 2020). Later scholars such as Robert R. Marett and Ake Hultkrantz argued that shamanism should be understood as a distinct religious system in which magical practices operate as an integral component of religious belief and ritual (Marett, 1914; Hultkrantz, 1992). Functionalist anthropologists, including Bronislaw Malinowski and E. E. Evans-Pritchard, further emphasised that magic and ritual practices perform important social functions by reinforcing cultural norms, reducing uncertainty, and maintaining social cohesion within communities (Malinowski, 1948; Evans-Pritchard, 1976).

In several regions of Nepal, particularly in rural areas, superstitious healers frequently serve as the initial point of contact for health-related concerns (Subedi, 2023). This preference is influenced by multiple factors, including affordability, accessibility, cultural familiarity, and community trust (World Health Organization [WHO], 2002). Because traditional healers are often deeply embedded within local communities and share linguistic and cultural backgrounds with their patients, they frequently perceived as trustworthy and accessible sources of care (Subedi, 2023).

Healing traditions vary across Nepal’s multi-ethnic communities. Majority traditional healing practices draw upon narratives rooted in Hindu and Buddhist traditions (Pandey, 2025). For example, Brahmin and Chhetri communities may consult *Kabiraj* or *Jhakris*, Limbu communities often seek assistance from *Fedangma* or *Angsi*, Newar communities traditionally consult *Vaidya*, the Gurung community has ritual specialists known as *Pachyu*, and the Tamang community consults *Bonpo Lama* (Pandey, 2025). These healers are often regarded as spiritual intermediaries capable of diagnosing and treating illness through ritual practices, including chanting of mantras intended to expel malevolent spirits believed to cause disease.

Mental Health and Supernatural Paradigms

Within the Nepali socio-cultural context, mental health conditions, particularly severe psychiatric disorders, are frequently interpreted through supernatural paradigms, including demonic possession, sorcery by adversaries, or divine retribution linked to past “karma” (Upadhyaya, 2020). Such belief systems are deeply rooted in historical religious and are often associated with ancient scriptures such as the *Vedas*, particularly the *Artharva Veda*, which contains references of ritual healing and spiritual remedies (Upadhyaya, 2020).

Historically, communities in the region worshiped natural elements such as mountains, rivers, and forests as sacred

entities and institutionalised ancestral worship through the concept of “*Kul-Debta*” (family deities), reflecting the belief that spirit forces persist beyond physical death (Baniya, 2014). These belief systems continue to influence contemporary interpretations of illness and health.

Consequently, families often seek spiritual intervention before pursuing biomedical treatment. In efforts to appease deities or ward off malevolent spirits, families frequently consult traditional healers or *Mata* (women believed to possess spiritual healing powers) prior to accessing formal healthcare services (Upadhyaya, 2020). According to the National Mental Health Survey (2020), approximately 6.7 percent of Nepali adults reported seeking treatment for mental illnesses from faith healers, while 8.8 percent consulted non-specialist physicians and 6.5 percent sought treatment from psychiatrists (Nepal Health Research Council [NHRC], 2020).

Research by global mental health scholars similarly indicates that in many low and middle-income countries, mental illness is commonly interpreted through spiritual or supernatural frameworks, including spirit possession, witchcraft, curses, or divine punishment. These explanatory models often lead individuals and their families to consult traditional healers before accessing biomedical mental health services (Patel, 2007). Such interpretations are deeply embedded in cultural and religious belief systems and significantly shape patterns of help-seeking behaviour.

Socio-Cultural and Economic Drivers of Traditional Healing

The preference for traditional or faith healers is often rooted in socio-economic necessity, as these services are generally less expensive and more geographically accessible than formal medical institutions, making them an attractive option for families with limited financial resources (NHRC, 2020). For many households, superstitious explanations linking illness to spirits, curses, or ritual violations provide culturally coherent interpretations that resonates more strongly than complex biomedical explanations.

Despite the cultural significance, the persistence of these practices can undermine the realisation of fundamental healthcare rights, particularly among women and marginalised groups (NHRC, 2020). In many instances, pregnant women and infants have suffered severe or fatal consequences when families prioritised ritual practices over professional medical advice (Shahi, 2024). In underdeveloped regions, this cycle is further reinforced by community pressure, traditional authority structures, and limited access to healthcare services (Shahi, 2024). The coexistence of traditional and biomedical systems becomes particularly problematic when ritual practices discourage or delay medical intervention. In emergency conditions such as sepsis, eclampsia, stroke, or snakebite, timely biomedical treatment is essential for survival.

Furthermore, certain healing process may involve physically harmful practices, including beatings, burnings, forced fasting, or prolonged isolation. Although such practices are not universally observed, they may result in serious physical and psychological harm. Historically, some shamans categorised complex diseases such as ulcer, cancer, or appendicitis under traditional diagnostic concepts such as *ganu*, *gola* and *shool*. In the absence of modern diagnostic techniques such as radiology, practitioners relied on the Ayurvedic *Tridosha* framework (*Vata*, *Pitta*, and *Kapha*), seeking to restore bodily balance through herbal remedies, natural therapies, and ritual mantras (Pandey, 2025). Consequently, the denial of timely and adequate treatment often occurs not through explicit institutional refusal but through a network of social stigma, misinformation, and delays in care-seeking behaviour.

Consequences: Obstruction of Healthcare Access and Harmful Outcomes

Within the Nepali context, superstitious healing practices can function as subtle but significant barriers to the effective healthcare delivery. Critical time may be lost through ceremonial activities, such as ritual fasting, animal sacrifices,

or repeated *jharphuk* sessions before biomedical treatment is sought. Such delays can be particularly dangerous in medical emergencies, including postpartum hemorrhage, stroke, malaria, or severe infections. Furthermore, some rituals involve physically invasive or violent acts such as forced ingesting of substances, beatings, or burning, which may cause severe physical and psychological trauma. Individuals exhibiting symptoms of mental illness or epilepsy are sometimes subjected to confinement under the belief that they are possessed by supernatural entities, thereby preventing access to appropriate psychiatric or medical care.

The economic consequences of these practices can also be substantial. Families may incur significant expenses associated with ritual ceremonies, amulets, or pilgrimages, which can deplete household resources and limit the ability to seek subsequent biomedical treatment or rehabilitation. These vulnerabilities are particularly pronounced among women, especially widows, elderly individuals, and members of marginalised communities, who may face accusation of witchcraft and become victims of violence, forced exorcisms, or social ostracism (Grigaitė, 2018). Such socio-cultural pressures discourage families from seeking formal healthcare services. Moreover, deeply rooted beliefs may undermine broader public health initiatives. Misconceptions regarding the spiritual dangers of vaccinations or the interpretation of diseases such as tuberculosis as divine punishment can obstruct evidence-based prevention and treatment programmes grounded in scientific medicine.

Legal and Policy Frameworks: The Interface of Constitutional Mandates and Traditional Practices

Nepal has established a comprehensive legal and policy framework aimed at addressing harmful traditional practices. However, a significant implementation gap persists between constitutional guarantees and the socio-cultural realities at the community level. Article 35 of the Constitution of Nepal (2015) guarantees the right to free basic healthcare services and equitable access to healthcare for all citizens. Despite the constitutional mandate, rural and marginalised communities often remain primarily dependent on shamans, *Dhami-Jhankri*, and other faith healers as their initial point of clinical contact. This reliance is shaped by an interrelated nexus of deeply rooted cultural beliefs, structural poverty, and the geographical inaccessibility of formal health facilities. Collectively, these factors undermine the effective realisation of the constitutional right to health by delaying or denying timely biomedical intervention.

Article 24 of the Constitution prohibits untouchability and harmful discriminatory practices. Nevertheless, violations remain prevalent, particularly in cases where women accused of witchcraft are subjected to social ostracisation, physical violence, or even homicide. Such instances illustrate that constitutional provisions are not self-executing; their practical effectiveness depends on effective implementation mechanisms, targeted advocacy, and community-level intervention. Despite a decade of progress in expanding primary healthcare networks and implementing the National Health Insurance Policy, the cultural hegemony of traditional healers continues to compete with formal medical institutions, particularly in rural areas.

Statutory Measures and the Enforcement Deficit

The National Penal Code (2017), particularly Section 168, represents a significant legislative advancement by criminalising witchcraft accusations and prohibiting torture and inhuman treatment. The Witchcraft Accusation (Offence and Punishment) Act (2015) further addresses gender-based violence rooted in superstition. However, harmful practices, including witchcraft-related abuse and *chhaupadi* continue to persist despite their criminalisation under Section 168(3). This persistence reflects the resilience of deeply entrenched cultural norms that resist legislative reform.

This enforcement deficit is often attributable to institutional inertia and local belief systems, where authorities may

share prevailing superstitious beliefs or prioritise communal harmony over legal accountability. The Public Health Service Act (2018) seeks to regulate healthcare standards; however, it does not explicitly prohibit superstitious healing practices. This legislative silence permits faith healers to operate with minimal regulatory oversight, particularly in areas where state healthcare infrastructure remains weak. Consequently, a dual healthcare system persists: reliance on shamanic healing in rural villages alongside biomedical healthcare in urban areas. While the Local Government Operation Act (2017) empowers local governments to eliminate harmful practices, many municipalities lack the political will, administrative capacity, or financial resources necessary to challenge the entrenched authority of faith healers.

Policy Initiatives and the Implementation Gap

Policy initiatives such as the National Health Policy (2019) and the Gender Equality and Social Inclusion (GESI) framework recognise superstition as a significant barrier to health equity and gender justice. However, these frameworks often fail to fully address how superstition interacts with broader structural inequalities, including poverty, caste hierarchies, and gender-based discrimination. Implementation remains the principal weakness of the system; victims frequently underreport violations due to fear of retaliation, social stigma, or scepticism towards legal institutions that may dismiss cases due to insufficient evidence (Singh, 2019).

The challenge is particularly acute in the domain of mental health services. Despite the availability of evidence-based treatments, approximately 86.3 percent of individuals in lower-middle-income countries do not receive biomedical treatment for anxiety, mood, or substance use disorders (Evans-Lacko et al., 2018). In many communities, faith healers traditionally play a significant role in mental healthcare and often serve as the first point of contact for individuals experiencing psychological distress (Nortje et al., 2016). Historical medical texts such as the *Charaka Samhita* also attribute significant curative power to ritual objects such as amulets, which are described as possessing healing efficacy comparable to multiple medical treatments (Sharma, 1949). Furthermore, the formal healthcare system is sometimes perceived as ill-equipped to address spiritually interpreted illnesses. In certain rural communities, hospitals may even be regarded with suspicion, with beliefs that the spirits of deceased patients may negatively influence the living (Levanita, 2023).

In this context, legal rights to health may remain largely symbolic if biomedical services fail to provide culturally responsive, accessible, and trustworthy alternatives to traditional healing systems. Bridging this constitutional-cultural divide requires not only legislative reform but also institutional accountability, culturally informed service delivery, and sustained community engagement.

The Interplay of Traditional Beliefs and the Right to Health

The findings reveal a significant disjuncture between formal legal commitments and the practical realities of healthcare delivery at the community level. While doctrinal analysis demonstrates that the state has established progressive legal protections to uphold the right to health, the empirical data indicate that cultural beliefs, poverty, and infrastructure deficits continue to drive reliance on faith healers. This reliance impedes the effective realisation of the constitutional guarantee of the right to health, particularly among marginalised communities where legal norms intersect with entrenched socio-cultural practices and structural inequities.

Clinical Consequences and Fatal Realities of Superstition

The study identifies a substantial opportunity cost associated with the exclusive reliance on traditional healing practices. Several case analyses illustrate how delays in seeking medical interventions resulted in preventable fatalities.

In Doti, a 21-year-old pregnant woman initially sought assistance from a faith healer instead of visiting a nearby birthing center; by the time consent for a cesarean section was obtained, fetal death had occurred (Shahi, 2024). Similar patterns were observed in cases involving neonatal respiratory disease (Shahi, 2024) and untreated meningitis in Bajhang (Singh, 2019). In another incident, a 12-year-old child suffering from meningitis died following physical trauma inflicted during traditional ritual practices. These cases demonstrate that the displacement of timely medical treatment by ritual-based healing can produce severe and sometimes fatal consequences (My Republica, 2013). Local health practitioners consistently characterised these outcomes as preventable and directly associated with delayed clinical engagement.

Qualitative Perspectives from Healthcare Providers

Qualitative interviews with healthcare professionals indicate that traditional beliefs significantly influence health-seeking behaviour, even when direct physical harm is not immediately evident. Respondents emphasised the importance of preventive education and timely access to evidence-based care, noting that existing legal measures have only partially mitigated harmful practices. Healthcare providers highlighted the ethical responsibility to balance cultural sensitivity with patients' rights to scientifically grounded treatment through effective counselling and communication.

Scepticism was expressed regarding formal collaboration between biomedical practitioners and traditional healers, particularly where practices are rooted in astrological or supernatural explanations of illness. In rural and socioeconomically disadvantaged communities, limited education, poverty, and geographic barriers reinforce reliance on faith healers, who are often more accessible than formal health facilities. These findings underscore a persistent gap between constitutional health guarantees and lived realities characterised by weak institutional governance and strong customary authority.

Quantitative Findings: Awareness and Behavioural Patterns

Survey data (n=100) indicate that harmful practices remain socially visible despite limited direct personal exposure. A majority of respondents (57 percent) reported no direct experience with harmful practices; however, 42 percent admitted consulting traditional healers prior to seeking biomedical care. Similarly, 41 percent reported that such consultations contributed to delays in accessing hospital care.

While only 7 percent reported direct experience with overtly harmful acts, the incidents cited included witchcraft accusation (10 percent), physical assault (6 percent), and forced fasting (5 percent). Notably, only 3 percent identified faith healer as their primary source of healthcare. However, 36 percent reported indirect awareness of harmful incidents, suggesting the continued cultural embeddedness of these practices.

Socioeconomic Determinants and Structural Inequality

The findings suggest that harmful healing practices remain socially visible and culturally significant in many regions. The persistence of these practices appears not merely to be a consequence of individual ignorance but rather a reflection of broader structural conditions, including caste-based discrimination, entrenched patriarchy, and limited access to healthcare services.

Respondents from rural and geographically isolated areas were more likely to report familiarity with such practices, indicating that superstition tends to flourish where health literacy is relatively low and healthcare infrastructure is weak. Caste-based discrimination, gender inequality, economic deprivation, and limited service accessibility emerged as critical drivers. High treatment costs and inadequate facility coverage were frequently identified as motivating factors for seeking traditional alternatives.

Public Priorities for Reform

Survey responses indicate a strong public inclination towards rational and scientific approaches as instruments for social change. An overwhelming 80 percent of respondents identified education and awareness as the most important mechanisms for addressing harmful practices. The finding suggests a growing public recognition of the role of knowledge and health literacy in transforming entrenched belief systems.

Approximately 33 percent of respondents identified the expansion of affordable and accessible healthcare as a critical step in reducing reliance on traditional healers, while 26 percent emphasised the need for stronger legal enforcement against exploitative practice. Smaller but significant groups (16 percent and 10 percent respectively) highlighted the importance of community involvement and the empowerment of women and marginalised groups as mechanisms of challenging traditional practice.

Participants demonstrated a holistic understanding of the right to health. A majority 74 percent prioritised expanding access to high-quality and affordable healthcare services, while 65 percent emphasised health education as an integral component of healthcare delivery. Broader determinants of health were also recognised: 30 percent emphasised the availability of trained medical personnel and adequate equipment, 27 percent cited proper sanitation, clean water, and environmental hygiene, and 22 percent called for greater accountability and more effective enforcement of health-related policies. A small proportion (14 percent) identified mental health services and preventive healthcare as emerging priorities, reflecting an evolving civic consciousness of health as a comprehensive constitutional entitlement rather than a charitable service.

Analytical Synthesis: The Implementation Gap

The thematic analysis confirms that superstition operates as a complex interaction between cultural norms and structural deficiencies. The data reveal clear connections between superstition and barriers to realisation of the right to health. A majority of respondents (62 percent) attributed the persistence of harmful healing practices to low literacy levels and limited awareness of scientific health principles. A further 30 percent linked these practices to poverty and restricted access to medical care, suggesting that superstition often fills the gap created by weak healthcare systems.

These findings indicate that such practices should not be understood merely as remnants of culture but rather as phenomena shaped by socioeconomic deprivation. They persist particularly in marginalised communities where medical services are inaccessible and rational healthy literacy remains limited.

Bridging the implementation gap between constitutional guarantee and ground-level realities requires strategies that addresses both cognitive and structural factors. The recurring emphasis on healthcare access reflects a practical recognition that superstition flourishes when institutional mechanism is absent or ineffective. These findings align with global health equity discourses emphasising the interdependence of social determinants, governance, and service delivery.

The transition toward evidence-based healthcare therefore rests on four central pillars: education, awareness, accessible healthcare, and effective governance. Sustainable change will be possible only through the genuine empowerment of the local communities, particularly women and other marginalised groups. Realising the right to health requires not only infrastructure and policy reforms but also broader cultural transformation grounded scientific literacy and social inclusion.

Collaboration and Cultural Sensitivity

The data indicate that modern medicinal practitioners continue to encounter challenges when attempting to promote biomedical treatment within communities where spiritual healing practices remain deeply embedded (Puno, 2025). Evidence suggests that providing biomedical explanations of disease alone is often insufficient to change behaviour, as many patients continue to perceive spiritual leaders as more appropriate sources of guidance than trained medical professionals.

To address this challenge, the study identifies the need for trust-building through collaborative approach (Levanita, 2023). Empirical research indicates that patient's mental health outcomes may improve when traditional healing practices are integrated with biomedical care under carefully structured collaborative models (Berhe, et al., 2024). Rather than alienating traditional practitioners, policy makers may consider engaging them as referral partners by mapping their community influence, identifying warning signs of medical emergencies, and facilitating joint awareness programmes.

Furthermore, strengthening public confidence in healthcare institutions is essential. This includes the establishment of grievance mechanisms, respect for women's privacy, culturally sensitive care, and courteous treatment of patients. The introduction of community health navigators who act as intermediaries between patients and medical institutions may further enhance accessibility and acceptability of healthcare services, in accordance with international human rights standards (Committee on Economic, Social and Cultural Rights, 2000).

A Rights-Based Reform Agenda

A rights-based approach must balance the prevention of harm with respect for cultural traditions. While certain rituals may provide psychosocial benefits such as community cohesion and emotional reassurance, ethical boundaries are crossed when harmful acts occur, including physical violence, burning, the administration of toxic substances, or the neglect of urgent medical care. To operationalise this ethical framework, the study proposes several multi-level interventions:

- ***Legal Enforcement:*** Authorities must adopt zero tolerance approach towards violence disguised as healing practices. Such incidents should be treated as criminal offences rather than cultural disputes. This requires training for law enforcement officials and the establishment of simplified reporting mechanisms.
- ***Structural Healthcare Reform:*** Strengthening emergency, maternity, and mental health services through task-sharing strategies and community-based emergency funding is essential. Ensuring that healthcare facilities are equipped with adequate medicines and emergency procedures will help strengthen public trust in biomedical care.
- ***Economic and Social Support:*** Health insurance schemes must be simplified and made affordable for economically vulnerable populations through efficient reimbursement mechanisms. In addition, survivor-centered support systems, including safe shelters and integrated service centers, are necessary to restore the dignity and well-being of victims of harmful practices.

Proactive Health Literacy

The findings underscore that education initiatives must be culturally accessible and community oriented. Public health campaigns may utilise local theater, radio programmes, and storytelling to communicate health information effectively. School-to-community health literacy programmes can further promote sustained awareness at the grassroots level. By strengthening data collection, research, and accountability mechanisms, the state can improve the

identification and monitoring of harmful practices. Such measures are essential for ensuring the effective realisation of the constitutional right to health for all citizens.

A Path Forward: Advancing Health Equity through Rights-Based Reform and Community Integration

Nepal's ongoing struggle against superstition-based healing practices underscores the persistent gap between constitutional ideals and lived realities. While legal provisions formally recognise the right to quality healthcare and protection from harmful practices, their practical impact remains constrained by systemic poverty, low levels of health literacy, and deeply entrenched cultural beliefs. The findings indicate that punitive measures alone are insufficient to address these challenges. Instead, sustained improvements in education, accessible healthcare, and community participation emerge as more effective catalysts for change. Bridging the divide between doctrinal commitments and empirical realities therefore requires a holistic strategy that strengthens legal accountability, enhances healthcare capacity, and fosters trust through literacy and culturally responsive engagement. An integrated reform agenda that combines legal, social, and medical interventions is essential for realising equitable, evidence-based healthcare consistent with constitutional principles.

To strengthen Nepal's response to superstition-related health barriers and reinforce constitutional accountability, the following rights-based recommendations are proposed:

Legal and Policy Reform: The Public Health Service Act (2018) should be amended to provide clearer statutory definitions regarding the scope of permissible traditional practices and to establish accountability mechanisms for harmful practices carried out in the name of healing. This reform should include mandatory reporting procedures and strengthened enforcement protocols. The right to health should be mainstreamed across all levels of government planning, with explicit recognition of the intersections between superstition, poverty, gender inequality, caste-based discrimination, and low literacy. Monitoring systems at the municipal level should be enhanced to ensure that healthcare delivery aligns with international standards of availability, accessibility, acceptability, and quality.

Structural Healthcare Enhancements: The inclusiveness and operational efficiency of the National Health Insurance Programme should be improved by simplifying enrollment processes and ensuring timely reimbursements. These measures would reduce the financial initiatives that often drive individuals to seek informal or unregulated healthcare alternatives. The expansion of mental health services is particularly urgent, alongside systematic cultural-sensitivity training for healthcare workers to address the psychosocial dimensions of superstition. A strategic shift is also required from an adversarial approach towards a structured collaborative care model, in which faith and traditional healers are trained as referral partners rather than viewed solely as competitors to biomedical services.

Community Empowerment and Health Literacy: Community-based awareness initiatives should extend beyond basic disease education to emphasise the importance of timely access to evidence-based medical care and the recognition of medical emergencies. Legal reform must therefore be complemented by sustained public engagement across both the health and education sectors in order to challenge the normalisation of harmful ritual practices. Strengthening institutional trust in healthcare systems also requires attention to patient dignity, gender-sensitive service delivery, privacy protections, and respectful communication within clinical environments.

Collectively, these reforms would support an integrated approach that addresses both the structural determinants and the psychosocial dimensions of superstition-related practices. Advancing health equity in Nepal requires aligning constitutional commitments with effective governance, inclusive service delivery, and sustained community engagement. Such alignment is essential to embedding social justice and human dignity within the country's evolving public health framework.

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From Policy to Practice: A Rights-Based Rural–Urban Analysis of Adolescent Sexual and Reproductive Health Rights in Nepal

Aparna Upadhyaya**

Abstract

Adolescents aged 10–19 constitute nearly one-quarter of Nepal’s population, placing them at the centre of the country’s aspirations for sustainable development, social justice, and gender equality. Despite the existence of a relatively progressive and comprehensive legal framework designed to safeguard adolescent sexual and reproductive health and rights (SRHR), young people continue to face significant barriers, including limited accessibility, persistent stigma, and gaps in service quality. This study examines the extent to which adolescents experience SRHR commitments in practice, adopting a rights-based analytical framework with particular focus on rural-urban disparities. Employing a mixed-methods approach that combines doctrinal legal analysis with qualitative inquiry, the study assesses the gap between national policy commitments and the realities experienced by adolescents in education, counselling, and healthcare services. The findings reveal a range of systemic challenges that undermine equitable access to SRHR information and services. The paper concludes with evidence-based recommendations aimed at promoting inclusive, equitable, and youth-centred SRHR programmes that more effectively align policy intent with adolescents’ lived experiences.

Keywords: *Adolescent SRHR, rights-based approach, rural–urban inequality, access to healthcare and education, Nepal*

Introduction

Adolescents, defined as the individuals between the ages of ten to nineteen years (Safe Motherhood and Reproductive Health Rights Act (2018) (SMRHRA) (§ 2(c)), represents a critical stage of human development marked by rapid physical, cognitive, emotional, and social transformation. According to the World Health Organization (WHO), this phase is foundational for establishing patterns of health and well-being that extend into adulthood. Adolescents need accurate information, including age-appropriate comprehensive sexuality education (CSE), opportunities to develop life skills, accessible and acceptable health services, and safe and supportive environments in order to transition successfully into adulthood (WHO, 2025). In the absence of these conditions, vulnerabilities deepen and inequalities become entrenched.

Sexual and reproductive health (SRH) encompasses a broad spectrum of essential services and entitlements, including access to contraception, safe pregnancy and childbirth care, prevention and treatment of sexually transmitted infections (STIs), protection from gender-based violence (GBV), and informed decision-making regarding one’s body and sexuality. These are not just medical services; they are recognised components of fundamental human rights and integral to the realisation of universal health coverage (WHO, 2025). Globally, adolescent SRH has been prioritised within the framework of United Nations Sustainable Development Goals (SDGs), particularly Target 3.7, which calls for universal access to SRH services, information, and education.

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In Nepal, adolescents aged 10-19 constitute approximately 25 percent of the national population (Ministry of Health and Population [MoHP], 2025), representing a critical demographic for the nation's sustainable development, social justice, and gender equality. The Constitution of Nepal (2015) guarantees reproductive health as a fundamental right, and the state has enacted a series of legislative and policy measures aimed at strengthening adolescent sexual and reproductive health and rights (SRHR). These include the SMRHRA, the Public Health Service Act (2018), the Act Relating to Children (2018), and the Adolescent Health and Development Strategy (2018), among others. Nepal is also a State Party to key international human rights instruments, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which reinforce state obligations to ensure adolescents' access to information, services, and protection from discrimination.

Despite this progressive normative framework, a persistent policy-to-practice gap remains (United Nations Population Fund [UNFPA], 2025). Adolescents continue to face barriers, such as stigma, limited confidentiality in service provision, inadequate SRHR knowledge, geographical constraints, and inconsistent implementation of adolescent-friendly services (Tiwari et al., 2021). These challenges are particularly pronounced in rural contexts, where disparities in infrastructure, awareness, and service delivery create systemic inequalities in access to SRHR information and care. Consequently, the formal recognition of rights does not automatically translate into meaningful realisation in practice.

Against this backdrop, this study examines the extent to which national legal and policy frameworks on adolescent SRHR are effectively implemented and whether adolescents are able to exercise and enjoy these rights in practice. The study pursues four primary objectives: (1) to analyse Nepal's legal and policy framework governing adolescent SRHR; (2) to identify gaps between normative commitments and on-ground implementation; (3) to compare rural and urban disparities in SRHR awareness and access; and (4) to propose evidence-based recommendations for strengthening adolescent-friendly SRHR Programmes.

The study is grounded in a human rights-based approach, which conceptualises SRHR as enforceable entitlements and emphasises the state's obligations to respect, protect, and fulfil these rights (Cook & Ngwenya, 2007). To systematically evaluate the service delivery, this paper employs the United Nations' AAAQ framework assessing the Availability, Accessibility, Acceptability, and Quality of SRHR information and services for adolescents in Nepal. Together, these analytical frameworks facilitate a comprehensive assessment of whether policy commitments are being effectively realised in practice.

Methodologically, the study adopts a qualitative approach that combines doctrinal legal and policy analysis with field-based inquiry. The doctrinal component examines constitutional provisions, statutory laws, policies, and relevant international agreements governing adolescent SRHR in Nepal in order to assess their scope, coherence, and enforceability. The non-doctrinal component captures implementation realities through qualitative data collected from adolescents, educators, and healthcare professionals.

Field-based data were collected through semi-structured interviews with 20 adolescents (10 from rural settings and 10 from urban settings), aged 10-19, and two school teachers. Rural data were gathered in Kanakasundari Rural Municipality, Jumla, and urban data in Kirtipur Municipality, Kirtipur. Interviews focusing on access to services, privacy, stigma, and awareness of SRHR rights, and perceptions of adolescent-friendly health services. Thematic analysis was conducted to identify recurring patterns including knowledge gaps, confidentiality concerns, and socio-cultural stigma. Comparative analysis between rural and urban respondents highlighted contextual variations. Legal texts were simultaneously subjected to doctrinal examination to evaluate the extent, coherence, and enforceability of SRHR provisions.

Strict ethical standards were upheld to protect participants' rights, safety, and dignity, with informed consent obtained from adults and assent plus parental or guardian consent for adolescents. Participation was voluntary, and confidentiality and anonymity were ensured, with sensitive SRHR discussions conducted respectfully and non-judgementally. While the study is limited by a small qualitative sample of 20 adolescents and two teachers and does not cover all provinces, restricting generalisability, it nonetheless provides valuable insights into adolescent SRHR implementation and offers context-specific recommendations to enhance accessible, inclusive, and youth-friendly services.

From Global Commitments to Local Realities: Adolescent SRHR in Nepal

Global evidence identifies adolescents as one of the vulnerable populations in relation to SRHR (WHO, 2022). Adolescents in low- and middle-income countries are at a greater risk of engaging in unsafe sexual practices, experiencing unintended pregnancies, and STIs, primarily due to limited access to CSE, inadequate youth-friendly services, and restrictive socio-cultural norms (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021). Structural inequalities, gender discrimination, and limited autonomy further compound these vulnerabilities, underscoring the need for right-based and context-sensitive interventions.

In Nepal, adolescents' access to SRHR services remains limited due to inadequate adolescent-friendly facilities, stigma, lack of privacy, unwelcoming provider attitudes, and persistent gender and cultural norms, particularly affecting girls, despite the existence of supportive policy frameworks (UNFPA, 2025). Data from the Nepal Demographic and Health Survey (NDHS) indicate that 14 percent of women aged 15–19 have been pregnant, and 2 percent have experienced pregnancy loss. By age 15, three percent of women aged 15–19 were already married, and 1 percent had already become pregnant, reflecting the persistence of early marriage and adolescent pregnancy (MoHP, 2022).

Adolescents face multiple barriers to accessing SRH services, including shyness, communication difficulties, and concerns regarding confidentiality (Shrestha, et al., 2024). Cultural norms, stigma and insufficient school-based sexuality education further constrain their access (Lafontan, et al., 2024). Rural adolescents, in particular, frequently express fear of breaches of confidentiality by local providers, while urban adolescents, despite closer proximity to facilities, report similar privacy concerns and stigmatising provider attitudes (Regmi, et al., 2010). These findings suggest that barriers are not solely geographic but are deeply embedded in socio-cultural norms and institutional practices.

Sociocultural norms significantly shape adolescent SRH behaviours (UNFPA, UNESCO & WHO, 2015). Rural girls are particularly affected by practices that compromise their autonomy and health consequences, such as child marriage, GBV, and Chhaupadi (menstrual seclusion) (Tiwari, et al., 2021). Further, adolescents often lack parental support when seeking reproductive health information and services, limiting their ability to make informed decisions (Singh, et al., 2023).

System-level barriers are equally striking. Although adolescent-friendly health services have been established in line with national guidelines, many facilities fail to meet prescribed standards due to inadequate training, irregular supplies, and unwelcoming environments (UNFPA Nepal et al., 2015). A study conducted among adolescent school students in Bhaktapur found that only 9.2 percent had ever used SRH services, with the primary barrier being a lack of confidential service environments, despite peer encouragement serving as a motivating factor (Bam et al., 2015).

Despite these challenges, Nepal has made significant policy commitments. The National Adolescent Health and Development Strategy (2000, revised 2018) and the Adolescent-Friendly Health Service Guidelines (2023) emphasise community outreach, school-based health education, and the provision of youth-friendly facilities. Recent administrative data indicate the expansion of adolescent-friendly service sites, including 235 in Bagmati and 191 in

Karnali during fiscal year 2080/81 (MoHP, 2025).

However, significant disparities remain. Rural and marginalised adolescents remain underserved, and financial barriers limit access to private-sector services. Both rural and urban adolescents report that high fees in private clinics restrict their ability to seek confidential and timely care (Regmi, et al., 2010).

Overall, the literature demonstrates a persistent gap between Nepal's progressive legal and policy frameworks and adolescents' lived experiences. Inadequate SRH knowledge, stigma, concerns regarding service quality, and entrenched socio-cultural restrictions continue to impede the effective realisation of rights. Achieving SDG 3.7 – universal access to SRH services, including family planning and education – will require strengthening both the supply of quality adolescent-friendly services and the demand through community awareness, peer education, and the active engagement of schools and families.

Normative Foundations of Adolescent SRHR: Legal and Policy Framework

A coherent and enforceable legal and policy framework constitutes the essential foundation for guaranteeing citizens' rights and holding the state actors accountable. Nepal has established a multi-layered normative architecture addressing adolescent SRHR, aligning domestic guarantees with international human rights norms and setting a comparatively progressive benchmark within the region.

Nepal's commitment to adolescent SRHR is rooted in the Constitution of Nepal (2015), which recognises reproductive health as a fundamental right. Article 38(2) guarantees every woman's right to safe motherhood and reproductive health; Article 35 ensures the right to access basic health services; and Article 18 affirms equality before the law and non-discrimination. Collectively, these provisions establish a constitutional basis for adolescents' access to SRHR services and information.

These constitutional commitments are operationalised through statutory legislation. The SMRHRA translates reproductive right into enforceable entitlements, including access to confidential SRHR services, education, information, counselling, and a range of contraceptive options. Complementary provisions are found in the Public Health Service Act (2018), which ensures access to quality and confidential health services, and the Act Relating to Children (2018), which establishes children's right to age-appropriate SRHR information and protection from harmful practices such as child marriage. Collectively, these instruments establish a substantive legal framework for adolescent SRHR.

To facilitate implementation, Nepal has developed targeted policy instruments. The National Adolescent Health and Development Strategy (2018) promotes youth engagement, gender equality, and the integration of SRHR into broader health and education systems. It is complemented by the Adolescent-Friendly Health Service Operational Guidelines (2023), which set the standards for the provision of confidential, respectful, and youth-responsive services delivered by trained and non-judgmental health professionals. These instruments operationalise constitutional guarantees within service delivery frameworks.

Nepal's domestic legal framework is reinforced by its obligations under international law. As a State Party to the CEDAW, the CRC, and the ICESCR, Nepal is legally bound to ensure non-discriminatory access to health, information, and education, including SRHR. Its endorsement of the International Conference on Population and Development (ICPD) Programme of Action further affirms its commitment to adolescent-friendly and rights-based SRHR services.

This comprehensive legal and policy framework reflects a progressive and rights-oriented vision for adolescent SRHR in Nepal. However, the strength of these normative commitments raises a critical question: to what extent are these guarantees effectively implemented and realised in practice?

The Policy-to-Practice Gap: A Rights-Based Assessment

Despite the existence of robust legal and policy frameworks, significant implementation gaps continue to prevent adolescents in Nepal from fully realising their SRHR. These challenges are not incidental; rather, they reflect entrenched structural barriers, restrictive socio-cultural norms, and persistent inequalities between rural and urban areas. The resulting failures are not merely administrative or logistical; they are systematic and interdependent with deficiencies in the right to information, particularly in the delivery of CSE, reinforce stigma, misinformation, and fear that undermine adolescents' effective access to services.

This section examines these interconnected failures through two fundamental rights: the right to information and the right to services. The analysis applies the AAAQ framework – Availability, Accessibility, Acceptability, and Quality – to critically assess how gaps in implementation compromise adolescents' substantive enjoyment of SRHR.

The Right to Information: Deficiencies in Comprehensive Sexuality Education (CSE)

UNESCO defines CSE as a curriculum-based process that provides age-appropriate, culturally sensitive, and scientifically accurate information on the physical, emotional, and social aspects of sexuality (2018). CSE aims to equip young people with the knowledge, attitudes, and skills necessary to develop respectful relationships, understand their rights, and protect their health and well-being (UNESCO, 2018). From a human rights perspective, the provision of CSE constitutes a core state obligation under the rights to health and education as recognised in international human rights law (Centre for Reproductive Rights [CRR], 2008).

Nepal has established a normative foundation for CSE through legislative and policy frameworks that support a holistic and integrated approach (LOOM, 2019), including the Act Relating to Children (2018), and the SMRHRA. Policy instruments such as the National Education Policy (2019), the School Sector Development Plan (2016-2023), and the updated National Adolescent Health and Development Strategy (2018) further endorse the integration of CSE within formal education and adolescent-friendly service frameworks. Nepal's commitments under the CRC, CEDAW, and the Asia-Pacific Declaration (2019) reinforce the state's obligation to ensure access to accurate and comprehensive SRHR information.

Notwithstanding these commitments, the implementation of CSE remains partial and inconsistent. Although CSE content has been integrated into the formal school curriculum, primarily through the subject "Health, Physical Education, and Creative Arts," delivery is often superficial and heavily focused on the biological aspects of reproduction, such as the anatomy of reproductive organs, family planning methods, and STIs. At the secondary education level (Grades 9 and 10), CSE components are optional, thereby limiting access for older adolescents at a critical developmental stage (Forum for Women, Law and Development et al., 2025).

The analysis reveals several critical deficiencies. First, the curriculum demonstrates a limited scope with insufficient attention to rights-based and psychosocial dimensions of sexuality. Concepts such as sexual rights, pleasure, sexual diversity, consent, characteristics of healthy relationships, and the deconstruction of harmful norms (for example, notions of virginity) are largely absent. Practical skills, including correct use of condom, are also inadequately addressed. Field interviews corroborate these gaps: seven out of ten urban adolescents and eight out of ten rural adolescents reported limited or no understanding of consent, pleasure, and characteristics of healthy relationships, while remaining respondents demonstrated only partial knowledge.

Second, a critical disconnect exists between education and service access. The curriculum provides inadequate information regarding the availability and location of adolescent-friendly health services, thereby weakening the functional link between knowledge acquisition and service utilisation.

Barriers for Out-of-School Adolescents

Deficiencies in school-based CSE are compounded for out-of-school adolescents, who are systematically excluded from this primary channel of information. This group, including child labourers, married adolescents, and street-connected youth are among the most vulnerable populations yet has the least access to formal SRHR education (LOOM, 2019). While non-formal and community-based initiatives exist, their coverage remains fragmented and limited. Digital platforms are emerging as alternative channels for SRHR information, but access remains uneven, particularly in rural and marginalised communities (LOOM, 2019).

According to UNICEF Nepal Education Fact Sheets (2022), out-of-school rates are consistently higher in rural areas across all levels of education. An estimated 387,300 children are out of school nationwide, including 160,400 at the primary level, 75,000 at lower secondary, and 151,900 at upper secondary. At the primary level, six percent of rural children are out of school compared to five percent in urban areas. These rural-urban disparities widen at secondary stages, with five percent of rural children out of lower secondary school compared to four percent of urban peers, and 17 percent of rural adolescents out of upper secondary school compared to 14 percent in urban areas.

This educational exclusion significantly undermines the effectiveness of SRHR policies that rely predominantly on school-based delivery mechanisms. Consequently, national commitments to adolescent SRHR fail to reach some of the most vulnerable youth, particularly those residing in rural and socio-economically marginalised communities. The following comparative analysis of disparities is synthesised from secondary data and qualitative interviews with students and teachers, focusing on the implementation of CSE in rural and urban Nepal.

Comparative Analysis of CSE Implementation in Rural and Urban Nepal		
Aspects	Rural Areas	Urban Areas
School Attendance and Dropout	Higher out-of-school rates: 5% (primary), 17% (upper secondary). Early marriage and poverty contribute to dropouts.	Lower out-of-school rates: 4% (primary), 14% (upper secondary). Better retention and access to educational institutions.
CSE Curriculum Delivery	Teachers often omit sensitive topics due to social taboos and insufficient training.	Teachers are more likely to deliver CSE, though the focus remains largely exam-oriented.
Trained Teachers and Resources	Limited availability of trained teachers and inadequate CSE materials; lack of inclusive tools for adolescents with disabilities (e.g., Braille, sign language)	Greater availability of trained teachers and CSE materials, but limited emphasis on rights-based content.
Cultural and Social Attitudes	Strong taboos around sexuality; open discussion is discouraged; gender inequality more visible.	Comparatively open environment; adolescents are exposure to SRHR information through schools and media.
Marginalised and Out-of- School Adolescents	Higher numbers of early married adolescents, and youths with disabilities are excluded from CSE	Some marginalised adolescents (e.g., street children) are excluded, but NGOs provide partial outreach.

Comparative Analysis of CSE Implementation in Rural and Urban Nepal		
Aspects	Rural Areas	Urban Areas
Digital Access to SRHR Information	Limited internet and digital literacy; minimal access to online SRHR content.	Wider internet access; adolescents use digital platforms for CSE and health information.

The Right to Services and Counselling

Access to SRH services extends beyond the mere physical presence of health facilities. For such services to be effective, they must be timely, geographically and financially accessible, culturally appropriate, and delivered according to professional standards of quality and care. Applying the AAAQ framework enables a systematic analysis of the structural and socio-cultural barriers that continue to limit adolescents’ access to SRHR services in Nepal, with a particular attention to rural-urban disparities.

Availability of Adolescent-Friendly Services

Adolescent-Friendly Health Service Operational Guidelines (2023) mandate the establishment of dedicated adolescent-friendly corners within health posts. However, empirical findings indicate a substantial gap between policy prescriptions and implementation, particularly in rural areas. One rural adolescent reported that: “The health post does not have a separate space for us,” highlighting the absence of designated infrastructure. Conversely, an urban respondent stated that he was unaware of the existence of adolescent friendly health services, suggesting deficiencies in outreach and service visibility. These experiences show inconsistent service availability. In many rural areas, the lack of physical infrastructure indicates that policy directives have not effectively operationalised. In urban areas, although services may formally exist, inadequate dissemination of information and limited community engagement undermine their practical utility. Consequently, service availability remains uneven and heavily contingent upon geographic location.

Accessibility of Services

The mere existence of services does not necessarily guarantee access. Geographic, financial, and informational barriers continue to restrict adolescents’ ability to utilise SRHR service, varying across rural and urban contexts. For rural adolescents, geographic distance constitutes a primary obstacle, with several respondents describing “walking up to hours to reach the nearest health post”. In urban areas, financial constraints were more frequently cited, with adolescents noting that costs associated with laboratory tests or contraception limit their ability to seek care. Information barriers further compound these challenges. Limited access to CSE leaves many adolescents without adequate knowledge of contraception, consent, and available services. Consequently, adolescents may neither recognise their health needs nor know how to access appropriate care, rendering services effectively inaccessible irrespective of physical proximity.

Acceptability

Acceptability emerged as a significant barrier, particularly due stigma, fear of social judgement, and concerns regarding confidentiality. Deeply embedded cultural norms surrounding sexuality create an environment in which seeking SRHR services is often perceived risky, shameful, and socially inappropriate. A rural adolescent explained: “The health service provider is from our village. I feel ashamed going to the health post asking about condoms, and later everyone will know.” This statement reflects concerns about confidentiality and community surveillance in close-knit rural settings. Urban adolescents reported a different manifestation of stigma, particularly in interactions with

health providers. A 17-year-old girl shared: “They ask why I need this at my age,” indicating judgemental attitudes that discourage service utilisation. These experiences reveal that access to SRHR services is determined not solely by physical proximity or affordability, but also by whether adolescents experience respectful, confidential, and non-judgmental care. Where stigma persists, formal service provision fails to translate into meaningful access.

Quality

The quality SRHR information and services remains uneven and often inadequate, particularly between rural and urban areas. Although health workers receive training in both rural and urban areas through the Family Welfare Division of the Ministry of Health and Population, service quality varies considerably. Rural respondents indicated that service provision is sometimes irregular or limited in scope. Urban schools and health facilities may receive supplementary support from non-governmental organizations, whereas rural institutions often lack comparable resources. This disparity results in uneven standards of care and education, with adolescents’ experiences largely determined by location rather than uniform national benchmarks.

Collectively, deficiencies across availability, accessibility, acceptability, and quality create interrelated barriers that significantly prevent adolescents’ ability to realise their right to sexual and reproductive services. These systemic gaps undermine the normative commitments articulated in Nepal’s national policy.

Assessing the Implementation of Adolescent SRHR in Nepal: Structural Gaps and Systemic Barriers

Drawing on doctrinal legal analysis, secondary data, and qualitative insights, this study identifies key findings regarding the implementation of adolescent SRHR in Nepal:

Policy–Practice Gap: Although Nepal’s Constitution and statutory laws recognise reproductive health as a fundamental right, the translation these guarantees into effective and equitable programming remains incomplete. Legislative instruments, including the SMRHRA, Public Health Service Act (2018), and Adolescent-Friendly Health Service Operational Guidelines (2023), provide a strong normative foundation. However, inconsistent enforcement, weak monitoring mechanisms, and limited accountability at the local level contribute to a persistent gap between legal commitments and actual service delivery.

Information and Education Disparities: CSE remains unevenly implemented across Nepal. It focuses predominantly on biological aspects of reproduction while neglecting critical dimensions such as consent, bodily autonomy, gender diversity, and healthy relationships. These gaps are more severe in rural areas, where teachers often lack adequate training and operate within strong socio-cultural taboos. Out-of-school adolescents, including child labourers, married adolescents, street-connected children, working adolescents, and adolescents with disabilities are largely excluded from structured SRHR education, thereby widening existing knowledge inequalities.

Service Availability and Accessibility: Although AFHS facilities are formally established, their geographical distribution and operational functionality vary significantly. Rural adolescents face structural barriers, including long travel distances, irregular service provision, and limited human resource capacity. Urban services are comparatively better equipped; however, cost-related barriers and experiences of stigma reduce effective utilisation. Additional constraints, such as transport challenges, limited awareness of available services, and concerns regarding privacy, further restrict access.

Acceptability and Stigma: Socio-cultural norms and fear of social judgment continue to undermine adolescents’ willingness to seek care. In rural communities, concerns about community scrutiny and reputational harm are particularly

acute. Urban adolescents report experiences of moral judgment and provider bias, which similarly discourage service uptake. These findings indicate that formal service availability alone is insufficient; social acceptability and trust are essential determinants of effective access.

Quality of Care: Variations in training, supervision, and institutional oversight affect the quality of adolescent SRHR services. Many providers lack specialised competencies in delivering confidential, non-judgmental, and youth-sensitive care. Urban areas often benefit from NGO-supported training initiatives, whereas rural facilities have limited opportunities for continuous professional development. Consequently, the quality of care adolescents receive remains uneven and geographically stratified.

Toward Accountable and Equitable Adolescent SRHR Implementation: Conclusion and Reform Priorities

Nepal's adolescent SRHR framework presents a strong rights-based vision, grounded in constitutional guarantees and reinforced by international human rights standards. However, a substantial implementation gap persists between policy commitments and adolescents' lived experiences. Many young people, particularly those in rural, remote, and marginalised communities, continue to face barriers accessing reliable information, confidential support, and quality health services.

These findings demonstrate that adolescent SRHR is not solely a public health issue; it is fundamentally linked to individual equity, autonomy, and dignity. Bridging the policy-practice divide requires sustained efforts to translate legislative commitments into accountable, community-responsive action. Without meaningful action to address entrenched stigma, weak monitoring and accountability, and fragmented inter-sectoral coordination, Nepal's progress toward achieving SDG targets 3.7 will remain constrained. The following evidence-based recommendations are directed toward key stakeholders, including policymakers, healthcare providers, local governments, advocacy groups, and development partners. A coordinated, multi-sectoral approach is essential to strengthening adolescents' sexual and reproductive health and rights.

Strengthen Comprehensive Sexuality Education (CSE): Sexuality education in Nepal remains disproportionately focused on biological aspects of reproduction, with insufficient attention to rights, consent, gender equality, and healthy relationships. A standardised, right-based CSE curriculum aligned with international technical guidance (including UNESCO standards) should be institutionalised nationwide. Teacher training must be strengthened to ensure educators are equipped to address sensitive topics confidently and accurately. Additionally, alternative delivery mechanisms should be developed to reach out-of-school adolescents, reducing inequalities in access to information and enhancing informed decision-making.

Expand and Systematically Monitor Adolescent-Friendly Health Services: Although many health facilities are designated as adolescent-friendly, particularly in rural settings, they often lack privacy, trained personnel, and consistent operations. Establishing fully functional, private service spaces in all health posts, institutionalising refresher training and supportive supervision for health workers, and introducing youth feedback and grievance mechanisms would enhance service responsiveness, confidentiality, and accountability.

Prioritise Rural Access and Geographic Equity: Geographic disparities remain a central barrier to equitable SRHR access. Rural adolescents face structural challenges, including long travel distances, limited awareness, and restrictive socio-cultural norms. Strategies such as mobile clinics, community outreach initiatives, subsidised transportation or service costs, and locally tailored interventions development partnerships with local governments can reduce geographic inequalities and ensure more inclusive service coverage.

Ensure Confidentiality and Non-Judgmental Service Delivery: Concerns regarding stigma, moral judgment, and breaches of privacy significantly deter adolescents from seeking care. Targeted training for service providers on adolescent rights, ethical standards, and youth-sensitive communication is essential. Service environments should be redesigned to protect both visual and conversational privacy. Clear accountability protocols and complaint mechanisms should be institutionalised to build trust and safeguard adolescents' dignity.

Strengthen Community and Parental Engagement: Social stigma surrounding adolescent sexuality continues to limit access to accurate information and services. Structured community engagement, including awareness campaigns, parent–adolescent dialogue Programmes, and collaboration with religious and cultural leaders can facilitate normative change. Community-level interventions are critical for reducing stigma, promoting gender-equitable attitudes, and supporting adolescents' autonomy.

Integrate Mental Health and Gender Dimensions into SRHR Programming: Current Programmes often overlook psychological well-being, consent, and GBV. Integrating mental health support, relationship skills, and gender-transformative content into both education and service delivery frameworks would promote more holistic approach to adolescent health. Training school counsellors, peer educators and health providers to recognise and respond to psychosocial needs is essential for comprehensive care.

Enhance Data Collection and Policy Accountability: Robust monitoring and disaggregated data are indispensable for evidence-based policymaking. Establishing a national adolescent SRHR monitoring framework, supported by data disaggregated by gender, age, geography, disability status, and socioeconomic background, would strengthen planning and resource allocation. Regular service audits and transparent reporting mechanisms are necessary to ensure that policy commitments translate into measurable improvements in adolescent health outcomes.

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Legal Disadvantages Faced by Men in Nepal: With Special Reference to Domestic Violence and Sexual Offence Laws

Bhaj Narayan Regmi**

Abstract

Although the Constitution of Nepal (2015) guarantees gender equality and non-discrimination on the basis of sex, concerns have been raised regarding the differential legal treatment of male victims under existing domestic violence and sexual offence frameworks. This study critically examines the Domestic Violence (Crime and Punishment) Act (2008), and the National Penal Code (2017), analysing whether their substantive provisions, interpretative practices and implementation patters adequately ensure male survivors' access to justice. Drawing on doctrinal analysis and qualitative inquiry, supported by media reports and comparative perspectives, the study argues that while domestic violence legislation is formally gender-inclusive, its practical implementation often operates predominantly in favor of women as victims. Furthermore, the statutory definition of rape under the 2017 National Penal Code has been criticised for excluding male and certain gender-diverse individuals from full legal recognition. Although judicial decisions have recognised the possibility of female perpetrators in limited contexts, such recognition has not consistently translated into meaningful institutional protection for male survivors. The study underscores the need for gender-neutral legal reforms and institutional measures to ensure equitable protection and access to remedies, thereby bridging the gap between constitutional guarantees and the lived realities of male survivors.

Keywords: *Gender equality, male victimization, domestic violence law, sexual offences, Nepal*

Introduction

Gender equality requires that the interests, needs and priorities of both men and women are taken into consideration, while recognising the diversity within these groups (Lamsal, 2018). Historically, men have occupied positions of power in both public and private spheres, and social structures have largely reflected male privilege (Connell, 2005). Legislative and policy reforms aimed at advancing women's rights have therefore been essential in addressing longstanding inequalities and systemic discrimination. Such corrective measures are grounded in principles of substantive equality and remain vital within societies shaped by patriarchal norms. At the same time, gender systems may produce disadvantages for both men and women, albeit in different forms. Emerging scholarship highlights the need to examine the comparatively less explored dimension of male disadvantage, particularly in contexts where social stigma and legal frameworks may inadequately recognise men as victims (Scarce, 2008).

The Constitution of Nepal (2015) guarantees equality before the law and prohibits discrimination on various grounds, including sex (Article 18). Within this constitutional framework, Nepal has enacted progressive legislation aimed at remedying entrenched and pervasive forms of discrimination against women, particularly in relation to domestic violence and sexual offences. Although these reforms represent significant advancements in human rights protection, questions arise as to whether certain laws or patterns of implementation may inadvertently generate legal disadvantages for men as victims of domestic abuse and sexual offences (Stemple, 2009).

This article examines the extent to which male victims of domestic violence and sexual offences in Nepal encounter

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structural, statutory and institutional barriers to justice. It explores whether gendered implementation, statutory exclusions and social stigma restrict effective access to protection and remedies. In particular, while the Domestic Violence (Crime and Punishment) Act (2008) is framed in gender-neutral terms, institutional support systems have predominantly evolved around women's protection. Furthermore, the definition of rape under the National Penal Code (2017) excludes men from its primary protective scope. These issues reveal a comparatively underexplored dimension of legal disadvantage within Nepal's gender justice discourse.

The objectives of this study are fourfold: first, to critically examine the legal inequalities faced by men in Nepal in relation to domestic violence and sexual offence laws; secondly, to identify areas in which men may experience disadvantage within the broader legal and social context; thirdly, to compare Nepal's legislative framework with international and regional approaches that adopt gender-neutral practices; and finally, to propose policy and legal reforms aimed at strengthening protection, support mechanisms and access to remedies for male survivors.

Methodologically, this research adopts a qualitative and doctrinal approach. Primary legal sources, including the Constitution of Nepal (2015), the Domestic Violence (Crime and Punishment) Act (2008) and the National Penal Code (2017), are critically analysed. Secondary materials, including academic literature, judicial decisions and reports from relevant organisations, are reviewed to assess implementation challenges and institutional responses. A comparative perspective is also employed to situate Nepal's framework within broader legal developments.

The study is confined to legal and institutional analysis. It focuses on statutory provisions, institutional practices, structural mechanisms and social stigma affecting male survivors of domestic violence and sexual offences in Nepal. It does not incorporate original empirical fieldwork, quantitative surveys or an extensive examination of sociological and psychological dimensions of male victimisation. Accordingly, the analysis is directed towards doctrinal coherence, institutional design and constitutional alignment rather than empirical assessment. By situating the discussion within principles of equality and access to justice, this article seeks to contribute to a more comprehensive understanding of gender and legal protection in Nepal. Ensuring that constitutional guarantees operate meaningfully for all individuals requires careful scrutiny of both legislative intent and practical implementation within existing legal frameworks.

Equality in Principle, Disparity in Practice: Gendered Dimensions of Legal Protection in Nepal

The Constitution of Nepal (2015) guarantees equality before the law and prohibits discrimination on grounds including sex, thereby establishing a robust normative framework for gender justice. These constitutional commitments are further reinforced through legislative reforms aimed at addressing gender-based violence and discrimination. However, academic commentary and institutional analyses suggest a divergence between formal equality and lived realities (Kapur & Cossman, 2022). While constitutional and statutory frameworks endorse gender neutrality and gender justice, implementation practices often reflect entrenched socio-cultural norms. This section reviews the literature across two principal domains—domestic violence and sexual offences—with particular attention to how male victimisation is addressed within Nepal's legal discourse.

Domestic Violence: Gender-Neutral Law, Gendered Implementation

The Domestic Violence (Crime and Punishment) Act (2008) defines an "aggrieved person" in gender-neutral terms, encompassing any individual subjected to physical, mental, sexual, or economic harm within a family relationship (§ 2). On its face, the law provides equal standing to both male and female victims.

Empirical data, however, reveal important contextual dynamics. According to the Annual factsheet on Gender based violence 2080/2081 published by the Nepal Police Headquarter Crime Investigation Department, of 16,434

registered domestic violence cases in the fiscal year 2080/81 (B.S.), 1,593 involved male victims (Nepal Police, 2024), representing approximately 9.7 percent of the total cases. Although significantly lower than the number of female victims, this figure nonetheless indicates the presence of male victimisation within domestic settings.

Qualitative study further observes that men's experiences of intimate partner violence in Nepal remain understudied (Infanti et al., 2020). A study conducted by the National Library of Medicine (2020) also indicates that patriarchal constructions of masculinity discourage men from reporting abuse, associating victimhood with stigma and social ridicule. This cultural dimension is reinforced by institutional practices. Available literature suggests that shelters, psychosocial counselling services and public awareness campaigns are overwhelmingly directed towards female survivors (McKenzie, 2021).

Similarly, professional assessments indicate that police responses frequently channel domestic violence complaints through women's protection cells, which may inadvertently discourage male reporting (McKenzie, 2021). Studies further suggest that male survivors often hesitate to report abuse due to stigma, fear or ridicule and a perceived reluctance among law enforcement officials to register complaints (Widanaralalage, 2022). Collectively, literature highlights a significant disjunction: although the statutory framework is formally inclusive, institutional structures and socio-cultural norms may operate in ways that limit male survivors' effective access to remedies.

Sexual Assault and Rape Laws: Male Exclusion from Legal Protection

In contrast to domestic violence legislation, the National Penal Code (2017) defines rape in explicitly in gendered terms. Section 219 characterises rape as an offence committed by a man against a woman, thereby excluding men and gender minorities from recognition as victims under this /provision.

Scholarly commentary has identified this statutory formulation as a substantial limitation. For instance, Hirachan and Limbu (2016) argue that prevailing legal understandings conceptualises rape as an offence that can be committed by men, reflecting traditional assumptions regarding sexual role. They further cite international data suggesting that a substantial proportion of men experience sexual violence during their lifetime, underscoring the global relevance of male victimisation.

Comparative legal scholarship demonstrates that several jurisdictions have adopted more inclusive approaches. In Canada, the Criminal Code defines sexual assault in gender-neutral terms (Sections 265–273), focusing on non-consensual sexual activity rather than the gender of the victim or perpetrator. This formulation enables individuals of any gender to access legal protection and remedies. Institutional measures further support this framework; for example, the Department of Justice Canada (2013) highlights the specific challenges faced by male survivors and emphasises the need for tailored support services.

Similarly, the United Kingdom's Sexual Offences Act 2003 provides gender-neutral protection across a range of sexual offences, including sexual assault and assault by penetration (Sections 1–4). Although the offence of rape is defined in terms of penile penetration, other provisions ensure that victims of all genders can seek legal redress for non-consensual sexual acts.

By contrast, South Asian legal systems continue to retain gender-specific definitions, reflecting persistent socio-legal assumptions about victimhood and perpetration. For instance, In India, rape is defined under Section 375 of the Indian Penal Code, which describes rape as sexual intercourse committed by a man against a woman under specified coercive or non-consensual circumstances. The statutory language identifies the perpetrator as male and the victim as female, thereby excluding male victims from the legal definition of rape (Indian Penal Code, 1860, § 375).

Similarly, Pakistan's rape law under the Pakistan Penal Code defines rape as sexual intercourse committed by a man against a woman without her consent. Section 375 of the Code explicitly frames rape as an offence committed by a man against a woman, which effectively excludes male victims from the statutory definition of the offence (Pakistan Penal Code, 1860, § 375). Bangladesh also maintains a gender-specific definition of rape. Under Section 375 of the Penal Code of Bangladesh, rape is defined as sexual intercourse by a man with a woman under circumstances involving coercion, lack of consent, or abuse of authority. As in India and Pakistan, the statutory language identifies the victim as female and the perpetrator as male (Penal Code, 1860, § 375). Despite recognition of this definitional gap, there remains a notable absence of empirical research concerning the prevalence, lived experiences and justice-seeking behaviors of male sexual offence survivors in Nepal. The limited academic engagement with this issue suggests that male victimisation in the context of sexual offences remains marginal within national legal scholarship.

Identified Research Gap

The reviewed literature demonstrates a consistent pattern. In the context of domestic violence, the law is formally gender-neutral, yet implementation appears gendered in practice. In relation to rape, the statutory definition itself excludes men from recognition as victims. While these issues are occasionally acknowledged within broader discussions of legal reform, the scholarship overwhelmingly focuses on women's vulnerabilities, often without parallel examination of male victimisation.

Consequently, a critical gap exists in systematic legal analysis addressing the disadvantages faced by men within Nepal's domestic violence and sexual offence frameworks. This study seeks to address that gap by critically examining both statutory design and institutional practice, situating the analysis within broader debates on substantive equality, constitutional guarantees and human rights. In doing so, it contributes to a more comprehensive understanding of gender, victimhood and access to justice within the Nepali legal system.

Substantive Equality and Structural Exclusion: Assessing Legal Protection for Male Victims in Nepal

Disadvantages within the Domestic Violence Framework

The Domestic Violence (Crime and Punishment) Act (2008) was enacted with the objective of preventing and punishing domestic violence and providing protection and remedies to victims. Section 2 of the Act defines domestic violence as "any form of physical, mental, sexual or economic harm perpetrated by a person against another person with whom he or she has a family relationship". The term "aggrieved person" is similarly defined in gender-neutral language as "any individual in a domestic relationship who alleges having been subjected to domestic violence". The statute therefore provides formal recognition to male victims, distinguishing Nepal from several South Asian jurisdictions that adopt explicitly gendered domestic violence frameworks. For instance, Section 3 of the Domestic Violence (Prevention and Protection) Act, 2010 of Bangladesh, Section 4 of the Domestic Violence (Prevention and Protection) Act, 2012 of Pakistan, and Section 2 of the Law on Elimination of Violence against Women, 2009 of Afghanistan recognise only women as victims.

Notwithstanding this formal inclusivity, enforcement structures reveal asymmetries in practice. Although the Act permits all individuals to file complaints with the police or local authorities, the involvement of the National Women's Commission creates a practical advantage for women, as its mandate is primarily oriented towards women's protection. Institutional services, therefore, may inadvertently limit access to support for male survivors, highlighting a structural imbalance in the implementation of domestic violence laws. Shelters, psychosocial counselling services and public awareness campaigns predominantly identify women as the principal beneficiaries (NHRC, 2020).

At provincial and local levels, service centres, dedicated funds, procedural mechanisms and remedies are largely

designed for women, with limited parallel provisions for male survivors. Complaints are typically channelled through the Women, Children and Senior Citizen Service Centres (WCSCSCs) within the Nepal Police, which provide protection, mediation and rescue services primarily directed at women and children. While such mechanisms are essential for addressing gender-based violence against women, they may inadvertently create structural barriers for male complainants.

Media and civil society reporting further illustrate these challenges. Instances have been documented in which husbands have filed complaints alleging abuse by their wives (Bajracharya, 2025). Although numerically fewer than cases involving female victims, such reports indicate that male victimisation exists as a social reality and requires appropriate institutional recognition and response (Republica, 2023). For example, a 2019 report in *Nagarik News* described the experience of a cart-puller in Kathmandu who endured prolonged domestic abuse but struggled to seek assistance due to fear of social stigma and limited institutional recognition (*Nagarik News*, 2019). Such examples, while not statistically dominant, underscore the importance of ensuring that statutory inclusivity translates into practical accessibility.

Gaps in Sexual Offence and Rape Laws

In contrast to domestic violence legislation, the National Penal Code (2017) adopts an explicitly gendered definition of rape. Section 219 defines rape as non-consensual sexual intercourse committed by a man against a woman or girl, thereby excluding men and gender-diverse individuals from recognition as victims under this provision. Sexual offences are often perceived as crimes affecting women; however, men may also experience comparable physical, emotional and psychological harm, compounded by societal stereotypes surrounding masculinity (University of Central Florida, n.d.). The statutory definition, which centres on penile–vaginal intercourse, reinforces a narrow understanding of sexual violence and excludes victims of other genders (Amnesty International, 2022).

This limitation has attracted criticism, including during Nepal's Universal Periodic Review before the United Nations Human Rights Council, where recommendations were made to consider gender-neutral reforms in sexual violence laws (United Nations Human Rights Council, 2021). Such exclusions may undermine access to justice, including for male child victims (Sapkota, 2022). The prevailing legal framework reflects an implicit assumption that men are solely perpetrators, reinforcing the misconception that men cannot be victims of sexual offences.

Police data indicate that male victimisation, although comparatively limited, is not absent. The Nepal Police factsheet (2024) for the fiscal year 2080/81 records 20 male child victims of sexual violence. While numerically small, these cases demonstrate that male victimisation is not merely theoretical. The absence of explicit statutory recognition may discourage reporting and complicate prosecution, reinforcing the perception that male victims fall outside the intended scope of legal protection.

Cases and Statistical Indicators

Statistical data on male sexual victimisation in Nepal remain limited; however, reported cases provide insight into the practical consequences of statutory exclusion. A 2023 report by Kendra Bindu documented the case of two Nepali men trafficked to Haiti who were allegedly subjected to repeated rape during captivity. Upon their return, they reportedly encountered significant legal obstacles in seeking justice due to the absence of explicit recognition of male victims within domestic law. Similarly, a 2020 report by Lokpath documented an incident in Jhapa in which a man was sexually assaulted by two perpetrators. Although the incident was recorded, prosecution under rape provisions was not available due to the gender-specific statutory definition. In addition, a community-based cross-sectional study (Devkota et al., 2021) found that among 210 male participants, the lifetime prevalence of intimate partner violence

was 56.2 per cent for psychological violence, 41.4 per cent for physical violence and 5.2 per cent for sexual violence. Although limited in scope, these findings indicate that violence against men within intimate relationships warrants greater legal and policy attention. Collectively, these cases and data suggest that violence against men in domestic and sexual contexts exists but remains under-reported or inadequately addressed due to legal and societal constraints.

Social Stigma and Constructions of Masculinity

Under-reporting of domestic and sexual violence is a global phenomenon affecting all genders. However, male survivors face additional barriers due to prevailing constructions of masculinity (Collings et al., 2005). Shame (Peel, 2000), confusion and lack of awareness (Peel, 2004), guilt (Hilton, 2008), fear (Sivakumaran, 2005) and social isolation are commonly cited obstacles to disclosure.

Studies indicate that men experiencing intimate partner violence often hesitate to seek assistance due to fears of ridicule, shame and embarrassment, as well as perceived threats to masculine identity (Hines & Douglas, 2009). Institutional responses may further compound these barriers where complaint registration is met with scepticism or where support services are not tailored to male survivors.

Comparative scholarship, including research by Kumar (2004), highlights similar cultural narratives in South Asia, where the belief that “a man can never be raped” persists. Such attitudes may influence reporting patterns and institutional responsiveness in Nepal, reinforcing stereotypes that position men as perpetrators rather than potential victims.

Judicial Perspective and the Recognition of Female Perpetrators

Despite statutory limitations, judicial interpretation demonstrates a degree of flexibility regarding perpetrator identity. In *Lakpa Sherpa v. Government of Nepal* (2016), the Supreme Court recognised that women may also commit rape, thereby challenging conventional assumptions that sexual violence is exclusively male-perpetrated. The Court clarified that criminal liability is not determined solely by the gender of the accused.

However, while the judiciary has broadened the scope of perpetrator liability, a corresponding expansion has not been extended to recognise men as victims under the principal rape provision. The continued reliance on separate offences for acts against men sustains a dual framework that symbolically and substantively differentiates victims.

Synthesis of Findings

The analysis reveals a pattern of partial inclusion within Nepal’s legal framework governing violence. In the context of domestic violence, statutory provisions are formally gender-neutral and, in principle, extend protection to all individuals irrespective of sex. However, the operational landscape—comprising enforcement mechanisms, institutional mandates and service delivery systems—remains predominantly oriented towards women. This results in a de facto asymmetry, where male survivors encounter structural and procedural barriers in accessing protection and remedies.

In contrast, the legal framework governing sexual offences reflects explicit exclusion. The statutory definition of rape does not recognise men and gender-diverse individuals as victims, thereby creating a clear doctrinal limitation. This exclusion is not merely symbolic but has tangible consequences, including the inability to invoke appropriate legal provisions, limited prosecutorial pathways and reduced institutional responsiveness.

Although judicial developments suggest a gradual shift towards recognising broader forms of perpetration, equivalent recognition of male victimhood remains underdeveloped. When combined with entrenched social stigma, normative

constructions of masculinity and institutional reluctance, these factors contribute to systemic under-reporting and constrained access to justice.

Taken together, these dynamics underscore a persistent disconnect between constitutional guarantees of equality and their practical realisation. Advancing substantive equality requires a critical reassessment of both legislative design and institutional practice to ensure genuinely inclusive legal protection.

Towards Inclusive Equality: Reforming Law and Policy for Gender-Neutral Justice

The study reveals a significant disjunction between Nepal's constitutional ideals of equality and the practical operation of its legal system. Although domestic violence legislation is framed in gender-neutral terms, implementation mechanisms and institutional practices remain predominantly oriented towards women. In the sphere of sexual offence, the gendered definition of sexual offences under the National Penal Code (2017) excludes men from explicit recognition as victims, thereby creating a clear legal lacuna.

Male survivors of domestic violence and sexual offence face institutional neglect, societal stigma and procedural barriers that impede access to justice. While judicial developments demonstrate a degree of openness in recognising female perpetrators, equivalent recognition of male victimhood within principal sexual offence provisions has not materialised. This gap between normative commitments and lived realities underscores the need for comprehensive reform. Comparatively, Nepal presents a paradox: it upholds progressive constitutional guarantees while retaining statutory formulations that limit inclusivity. Although regional jurisdictions such as India and Bangladesh have initiated debates on gender-neutral reforms, Nepal's discourse remains comparatively constrained. The persistence of gendered definitions reflects broader societal reluctance to acknowledge male vulnerability, perpetuating both legal invisibility and under-reporting.

Ultimately, a truly equitable justice system must recognise individuals first as victims or perpetrators, rather than through rigid gender classifications. Advancing substantive equality requires not only continued protection for historically marginalised groups but also critical scrutiny of whether existing legal frameworks operate inclusivity for all. Addressing the identified policy gap requires recognition that men, like women, may be deprived of legal protection due to entrenched gender-based stereotypes. While legal reforms in Nepal have rightly prioritised the protection of women against systematic discrimination and violence, a comprehensive understanding of equality must also account for situations in which men are excluded from protection due to assumptions about masculinity and perpetration.

Rather than framing equality solely through gender-specific lenses, policymakers may consider adopting a more inclusive conception grounded in the notion of "equal diversity". This approach acknowledges the social and biological differences between individuals while maintaining that legal protections and remedies must apply equally to all. Such an understanding fosters dialogue and cooperation, preventing the pursuit of competing group interests from undermining the broader objective of substantive and comprehensive equality.

Review and Reform of Gendered Legislation: Nepal's criminal and domestic violence statutes should be systematically reviewed to identify gendered language, structural gaps and implicit biases that may exclude male victims. In particular, the gender-specific definition of rape under the National Penal Code (2017) warrants reconsideration. Legislative amendments towards genuine gender neutrality would ensure equal protection and prosecution irrespective of gender.

Comparative jurisdictions such as Canada and the United Kingdom have adopted gender-neutral formulations in sexual offence legislation, focusing on consent and coercion rather than the gender of the parties involved. Aligning Nepal's legal framework with such standards would strengthen constitutional compliance and international human

rights commitments.

Constitutional Interpretation and Person-Centred Equality: To uphold the liberal spirit of the Constitution, equality should be interpreted as a person-centred right rather than a gender-exclusive entitlement. Article 18 (Right to Equality), alongside Article 38 (Rights of Women) and Article 51(j) (State policies relating to social justice), allows the State to pursue protective measures without reinforcing rigid gender stereotypes.

Institutional Reform and Impartial Service Delivery: Legal reform must be accompanied by institutional transformation to address the gendered delivery of justice. Police stations, courts and local bodies should establish gender-inclusive service desks and complaint mechanisms. Shelters and counselling services should be accessible to all victims of domestic and sexual violence, irrespective of gender. Reconfiguring Women, Children and Senior Citizen Service Centres (WCSCSCs) into broader gender-based violence units, or establishing parallel inclusive structures, would enhance institutional neutrality.

Development of National Statistics on Male Survivors: Reliable, gender-disaggregated data are indispensable for evidence-based policymaking. The Government should establish a national data collection mechanism documenting domestic and sexual violence against men, alongside existing data on women and children. Comprehensive statistical recording would illuminate the scale and characteristics of male victimisation, providing an empirical basis for legislative and institutional reform. Without accurate data, policy responses risk being shaped by assumptions rather than evidence.

Nationwide Psychosocial Counselling Assistance Programme for Men: The introduction of a nationwide psychosocial counselling assistance programme for male survivors could address the psychological trauma and social stigma associated with victimisation. Community-based counselling centres and mental health services would encourage reporting, provide rehabilitation support and promote social reintegration. Comparable initiatives in countries such as Canada demonstrate that targeted psychosocial support can reduce stigma and improve access to justice. A context-sensitive adaptation of such programmes could be integrated into Nepal's existing health and social welfare systems.

Reframing Public Awareness and Gender-Sensitivity Education: Public awareness programmes should challenge entrenched stereotypes of masculinity that prevent men from disclosing victimisation and seeking assistance. Integrating gender-sensitive education into public campaigns, educational curricula, media engagement and community outreach initiatives would promote a balanced understanding of gender-based violence, recognising that vulnerability is not confined to one gender. Reframing awareness strategies in this manner would foster empathy and inclusivity, creating a cultural environment conducive to reporting and institutional responsiveness.

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Psychological Abuse and Coercive Control in Domestic Violence against Nepali Women: Experiences, Legal Responses, and Policy Implications

Mastana Koirala**

Abstract

This study examines the experiences of psychological abuse and coercive control among Nepali women, analysing how these non-physical forms of domestic violence affect emotional well-being, autonomy, and mental health. Employing a mixed-methods design, the research combines doctrinal analysis of the legal framework, particularly Domestic Violence (Crime and Punishment) Act (2008), with empirical data derived from a survey of 57 women across all seven provinces of Nepal. The findings indicate that verbal humiliation, financial control, social isolation, and restrictions on mobility constitute the most prevalent forms of abuse. Structural and socio-cultural factors including stigma, family pressure, economic dependence, and limited awareness of legal rights, contribute significantly to women's silence and tolerance of abusive relationships. Although a substantial proportion of respondents demonstrate awareness of existing protective legislation, considerable barriers to accessing support services and justice mechanisms persist. The study underscores the urgent need to strengthen the enforcement of domestic violence legislation, expand mental health and psychosocial support services, implement gender-responsive education initiatives, and promote community-based awareness programmes. By highlighting both the legal and socio-cultural dimensions of psychological abuse and coercive control, this research seeks to inform policymakers, practitioners, and community stakeholders in efforts to enhance women's safety, dignity, and empowerment in Nepal.

Keywords: *Psychological abuse, coercive control, domestic violence, women's rights in Nepal, socio-legal analysis*

Introduction

Domestic Violence remains one of the most pervasive yet underreported forms of gender-based violence (GBV) worldwide (World Health Organization [WHO], 2025). Although public discourse and legal interventions have traditionally concentrated on physical and sexual assault, non-physical forms of abuse, particularly psychological abuse and coercive control remain comparatively under-examined (Wesenberg et al., 2025). Divergent terminology further complicates the field, as “domestic abuse”, “domestic violence”, and “intimate partner violence” often used interchangeably despite subtle distinctions in scope and emphasis (Dixon & Graham-Kevan, 2011).

The UN General Assembly (UNGA), in the Declaration on the Elimination of Violence against Women (1993), defines violence against women as any act of GBV that results in, or is likely to result in, physical, sexual, or psychological harm or suffering, whether occurring in public or private life (UNGA, 1993). In Nepal, the Domestic Violence (Crime and Punishment) Act (2008) adopts a similar broad definition, encompassing physical, mental, sexual, and economic abuse occurring within a familial relationship (§2(a)). Despite this inclusive statutory framework, implementation gaps and conceptual ambiguities persist in recognising and addressing psychological abuse as a serious form of violence.

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The WHO categorises violence into three broad groups: self-directed, interpersonal, and collective violence (Krug et al., 2002). Domestic violence falls primarily within the category of interpersonal violence and comprises behaviours including physical, sexual, emotional, and economic abuse, which often operate cumulatively to establish dominance and dependency. Within this typology, psychological abuse and coercive control function as particularly insidious mechanisms, eroding autonomy and self-worth without necessarily leaving visible physical evidence.

Coercive control is characterised by a sustained pattern of behaviour aimed at dominating and regulating another person within an intimate relationship (Stark, 2007). Rather than relying solely on physical force, it operates through manipulation, intimidation, and the gradual restriction of autonomy in order to establish authority. Psychological abuse may be conceptualised as encompassing two forms: instrumental abuse, involving deliberate and calculated attempts to dominate a partner, and expressive abuse, comprising verbal insults, humiliation and behaviours intended to undermine the victim's self-esteem and emotional stability (Hamel et al., 2023).

Although analytically distinct, these forms are frequently committed as part of a broader pattern of behaviour rather than as isolated incidents. Both coercive control and psychological abuse typically manifest cumulatively. Abuser may employ multiple tactics simultaneously, including emotional manipulation, threats, isolation and persistent criticism. While individual acts may appear minor in isolation, their repetitive and sustained nature creates a climate of fear, dependency and subordination (Alek Admin, 2023). It is this patterned conduct, rather than any single episode, that defines coercive controlling behaviour within domestic relationships.

Within the Nepali socio-cultural context, such abuse must be understood against a backdrop of entrenched patriarchal norms and gender hierarchies. Historical religious and customary influences, including interpretations of texts such as the *Vedas* and the *Manusmriti*, have shaped conceptions of gender roles and authority within the family structures (Naseera & Moly, 2022). Certain socio-religious interpretations have historically restricted women sexual autonomy, mobility, and reproductive rights by reinforcing male domination (Zaidi et al., 2009).

The persistence of psychological abuse is further reinforced by societal attitudes that support legitimise male authority and female subordination (New, 2001). Such norms frequently undermine women's liberty within the household and may justify coercive conduct. Empirical studies indicate that women in Nepal may be particularly vulnerable to psychological abuse and other forms of intimate partner violence due to culturally embedded expectations regarding obedience and domestic roles (Clark et al., 2018). Economic dependence significantly constrains women's capacity to leave abusive relationships or pursue legal remedies (Dhungel et al., 2017). Limited access to education and inadequate awareness of legal rights further impeded recognition of psychological abuse as unlawful conduct (Shrestha et al., 2024). Moreover, alcohol consumption has been associated with increased aggression and controlling behaviours in intimate relationships exacerbating existing power imbalances (Kurvinen, et al., 2025).

Against this backdrop, this study seeks to examine the experiences and perceptions of psychological abuse and coercive control among Nepali women. Specifically, it aims to identify prevailing forms and patterns of non-physical abuse within domestic relationships; analyse the socio-cultural and economic factors contributing to such abuse; assess levels of awareness regarding legal rights and available support mechanisms; and explore broader public attitudes toward gender equality and women's mental health. By integrating normative legal analysis with empirical inquiry, the study contributes to a right-based understanding of domestic violence and informs strategies for more effective legal, educational, and community-based interventions.

This study adopted a mixed-methods design, integrating doctrinal and empirical approaches to provide a comprehensive analysis of psychological abuse and coercive control among Nepali women. The doctrinal component involved a systematic examination of the domestic legal framework, including the Domestic Violence (Crime and Punishment)

Act (2008), relevant constitutional provisions, judicial interpretations, and policy instruments. It further incorporated comparative analysis of international human rights standards and jurisprudence, including decisions of the European Court of Human Rights, to identify global best practices and assess gaps within Nepal's legal system.

Complementing this analysis, a cross-sectional descriptive survey was conducted among 57 Nepali women aged 15 years and above across all seven provinces, selected through purposive sampling. Data were collected through a structured online questionnaire addressing lived experiences, recognition of psychological abuse, legal awareness, and barriers to seeking support. Participation was voluntary and confidential. Nevertheless, the reliance on documented legal sources, the relatively small sample size, online data collection, and self-reported responses may limit representativeness and may not fully capture informal or underreported experiences.

Prevalence of Psychological Abuse and Coercive Control: Nepali and Global Perspectives

National data from Nepal demonstrate the significant scale of domestic violence, particularly its non-physical forms. The Nepal Police Annual Factsheet on Gender-Based Violence (FY 2080/81) recorded 16,416 cases of domestic violence in 2023 (Nepal Police, 2023). Of these, psychological abuse accounted for the largest proportion, with 7,574 recorded cases, followed by 7,156 cases of physical violence and 1,668 cases of economic abuse. Women aged 19-35 years constituted the majority of survivors, and husbands were identified as the primary perpetrators in 12,559 cases. Provincially, Madhesh reported the highest number of cases (5,596), followed by Koshi (1,633), while Gandaki recorded the lowest (501). These figures indicate the pervasiveness of psychological abuse and coercive control within Nepali households and demonstrate that non-physical forms of domestic violence are widespread and require urgent legal and social intervention.

Comparable patterns are evident globally. In Australia, national statistics indicate that approximately 23 percent of women have experienced emotional abuse by an intimate partner, while 16 percent have faced economic abuse, frequently associated with coercive control (Australian Institute of Health and Welfare, 2023). Evidence from urban informal settlements in Mumbai reveals similarly alarming trends: 71 percent of ever-married women reported experiencing coercive controlling behaviours, including isolation, surveillance, and restrictions on personal autonomy (Kanougiya et al., 2021). Notably, exposure to multiple indicators of coercive control was strongly associated with adverse mental health outcomes, with 60 percent of affected women exhibiting moderate or severe depression symptoms, 42 percent reporting anxiety, and 17 percent experiencing suicidal thoughts (Kanougiya et al., 2021).

Broader cross-national analyses reinforce these findings. A comprehensive study involving nearly 360,000 women across 53 low- and middle-income countries found that 25 percent of women aged 15–49 had experienced psychological intimate partner violence within the past year, a prevalence rate comparable to that of physical intimate partner violence (29.6 percent) (Ma et al., 2023). Similarly, the 2024 Violence Against Women Survey conducted by the Bangladesh Bureau of Statistics (BBS), in collaboration with UNFPA, involving 27,476 women aged 15 and above, revealed that 70 percent of women had experienced some form of intimate partner violence in their lifetime. In the past year, 41 percent reported such experience, with emotional aggression and controlling behaviours emerging as the most prevalent forms, affecting 50 percent and 33 percent of women respectively (UNFPA Bangladesh, 2024).

Taken together, these national and international data underscore that psychological abuse and coercive control are pervasive across diverse socio-economic and cultural contexts. The Nepali experience reflects a broader global pattern in which non-physical forms of violence are widespread, deeply consequential for women's mental health and autonomy, and in urgent need of strengthened legal recognition and preventive intervention.

Comparative Jurisprudence on Psychological Abuse and Coercive Control: Lessons for Nepal

The recognition of psychological abuse and coercive control within intimate relationships has progressively evolved in comparative jurisprudence. While Nepal has undertaken legislative reform through the *Domestic Violence (Crime and Punishment) Act (2008)*, which expressly includes mental and emotional harm within the definition of domestic violence, the practical interpretation and enforcement of non-physical abuse remain comparatively limited. By contrast, several European jurisdictions, guided by the European Convention on Human Rights (ECHR), have increasingly acknowledged psychological violence as a serious encroachment on human dignity, autonomy, and family life. The jurisprudence of European Court of Human Rights (ECtHR) has been instrumental in clarifying state's obligations to prevent and respond to emotional and coercive abuse.

A significant development is reflected in *R.I. and Others v. Romania* (2005). The applicant, together with her two minor children, alleged that sustained controlling behaviour, emotional manipulation, and parental alienation by her former partner had caused severe psychological distress. Despite repeated complaints the national authorities failed to take effective protective measures. The case engaged Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the ECHR. The Court held that the Romanian authorities had neglected their positive obligation to protect the applicants from psychological and emotional violence. The ECHR recognised that prolonged emotional harm and manipulation within the family may amount to psychological abuse, even in the absence of physical assault. Its findings of violations under Articles 3 and 8 underscore that psychological and emotional suffering can constitute a serious human rights concern engaging state responsibility.

Procedural safeguards have also been emphasised in cases involving allegations of pervasive harm. In *Cupial v. Poland* (2023), the applicant was convicted domestically of psychologically abusing his three children by subjecting them to excessive religious practices, including nightly prayers, public confessions, restricted mealtimes, and other acts said to cause emotional distress. Before the ECtHR, he claimed that the domestic courts had failed properly to examine his submissions and relied heavily on expert evidence. The Court found a violation of Article 6 § 1 of the ECHR (right to fair trial), holding that the domestic courts had not adequately addressed the applicant's key arguments nor sufficiently assessed the objectivity of the expert evidence. The judgement underscores that cases involving psychological abuse require rigorous evidentiary scrutiny and transparent judicial reasoning to ensure procedural fairness.

Implications for Nepal: Strengthening Recognition and Procedural Safeguards

The comparative jurisprudence discussed above establishes two foundational principles of direct relevance to Nepal. First, psychological abuse and coercive control engage fundamental human rights protections even in the absence of physical violence. Emotional manipulation, isolation, intimidation and sustained patterns of domination may constitute serious infringements of dignity, autonomy and psychological integrity. Secondly, procedural fairness is essential when adjudicating complex criminal proceedings involving allegations to psychological abuse and emotional harm. Courts must rigorously evaluate the evidence record, address the central arguments advanced by the parties, scrutinise expert testimony for objectivity and reliability, and provide transparent and reasoned judgments.

For Nepal, these developments offer important guidance in strengthening the implementation of the Domestic Violence (Crime and Punishment) Act (2008). The above judgements reinforce the importance of recognising coercive control within domestic relationships and ensuring that law enforcement authorities, courts, and social services respond effectively to non-physical forms of abuse under the Act. Judicial and law enforcement authorities must therefore adopt a contextual understanding of coercive control as a patterned course of conduct rather than an isolated incident. In cases involving domestic violence or abuse, courts should undertake a careful assessment of all evidentiary materials, including expert psychological reports, and articulate clear reasoning when determining liability or protective measures.

Evidence from national police data and global research demonstrate the substantial prevalence of psychological abuse and coercive control among Nepal women. Aligning domestic practices with evolving international standards on women's rights and psychological integrity would enhance the protection of women's dignity, mental health, and autonomy, while reinforcing Nepal's commitment to substantive equality. Strengthened awareness initiatives, improved investigative procedures, coordinated social services, and effective judicial oversight are essential to ensure that psychological abuse and coercive control are addressed with the seriousness they warrant under national law and international human rights norms.

Theoretical Frameworks and Empirical Perspectives on Psychological Abuse and Coercive Control in Nepal

Psychological abuse and coercive control within intimate relationships remain pervasive yet often overshadowed dimensions of domestic violence in Nepal, while physical abuse continues to dominate both public discourse and research. Empowers studies demonstrate that non-physical forms of abuse are widespread and deeply harmful. Psychological abuse encompasses verbal threats, humiliation, social isolation, intimidation, and economic restriction that undermine an individual's sense of self-worth and security. Coercive control, by contrast, refers to sustained and strategic patterns of behaviour designed to limit a woman's autonomy and regulate her daily life. These forms of abuse extend beyond immediate emotional harm, producing long term consequences for mental health, social participation, and family relationships.

To conceptualise psychological abuse and coercive control within the Nepali context, three complementary theoretical perspectives are particularly instructive: the Power and Control Framework, the Feminist Ecological Model, and the Mental Health Perspective. Together, these frameworks provide a structured lens through which to understand how societal norms, household power dynamics, and individual vulnerabilities intersect to produce and perpetuate abuse.

Power and Control Framework: This framework emerged from feminist domestic violence research and practice in the United States during the 1980s, particularly through the work of advocates involved in the Duluth Domestic Abuse Intervention Project (Pence & Paymar, 1993). Rather than treating violence as series of isolated incidents or as interpersonal conflict, the framework conceptualises abuse as a patterned strategy employed to maintain dominance within intimate relationships. This perspective is especially useful for understanding psychological abuse and coercive control in Nepal, where control is often exercised through socially accepted mechanisms, including restrictions on women's mobility, pressure from extended family structures, monitoring of communication, and economic dependency.

In Nepal, such patterns explain how husbands and in-laws employ coercion, threats, economic restriction, and social isolation to maintain authority over women (Deuba et al., 2016). Qualitative studies show that women often experience constant surveillance, restrictions on mobility, and forced compliance with household decisions, especially when challenging traditional gender norms or refusing sexual advances (Ninsiima et al., 2018). The framework therefore highlights that coercive control is not an isolated event but a continuous and patterned form of abuse that shapes women's daily experiences.

Feminist Ecological Model: The Feminist Ecological Model builds upon ecological theories of human development associated with Urie Bronfenbrenner and was subsequent adapted within feminist scholarship on violence against women, particularly through the work of Lori Heise. The model conceptualises abuse as emerging from interacting layers of influence, including individual experiences, family dynamics, community expectations, and broader socio-cultural systems (Heise, 1998). By emphasising how power relations operate across these interconnected levels, the framework facilitates analysis of psychological abuse as shaped by socialisation processes, institutional structures, and collective norms, rather than solely interpersonal conflict.

In Nepal, patriarchal norms, reinforced through socialisation, caste hierarchies, and expectations of female obedience, contribute to the normalisation of psychological abuse (Mahato, 2025). Factors such as early marriage, low education attainment, and economic dependency intersect with societal pressures, thereby increasing women's vulnerability to coercive control (Karki, 2023). This model underscores that effective interventions must extend beyond addressing individual perpetrators and survivors to encompass family dynamics, community norms, and legal structures that sustain unequal power relations.

Mental Health Perspective: From a mental health perspective, research in trauma psychology and public health, particularly reflected in reports by the WHO demonstrate that psychological abuse and coercive control are strongly associated with depression, anxiety, diminished autonomy, and chronic stress-related health conditions among women (WHO, 2013). Empirical studies in clinical settings further indicate that emotional abuse is often more prevalent than physical abuse and is associated with increased psychological distress (Chaudhary et al., 2025).

This perspective emphasises the importance of integrating mental health interventions into domestic violence prevention and response strategies. It also draws attention to the compounding effects of social isolation and economic dependency on women's psychological well-being, underscoring the need for comprehensive psychological support mechanisms within legal and social service frameworks. Collectively, these theoretical and empirical perspectives demonstrate that psychological abuse and coercive control are complex phenomena rooted in structural inequality and sustained power imbalances. A comprehensive understanding of domestic violence in Nepal therefore requires attention not only to physical harm but also to the subtle, cumulative, and systemic mechanisms through which autonomy, dignity and mental health are undermined.

Silenced Harm: Empirical Findings on Psychological Abuse, Coercive Control, and Barriers to Justice among Women in Nepal

This section presents empirical findings derived from a survey of 57 respondents (N = 57), examining perceptions, personal experiences, and legal awareness relating to psychological abuse and coercive control.

Demographic Characteristics of Respondents: The demographic profile indicates that the majority of respondents fall within the 20–24 age group, followed by those aged 25–29, while comparatively fewer participants are above 30 years of age. Most respondents are unmarried, with a smaller proportion identifying as married. Geographically, the highest representation originates from Madhesh Province, followed by Koshi and other provinces, with the lowest participation from Gandaki. In terms of educational attainment, the overwhelming majority hold a bachelor's degree, while only a small percentage report secondary or primary-level education. Overall, the sample is predominantly young, educated, and unmarried, with stronger representation from selected provinces. This demographic composition should be considered when interpreting the findings, as it may influence levels of awareness and perception.

Understanding of Psychological Abuse: Respondents' perceptions of psychological and emotional abuse within intimate relationships reflect a high level of awareness regarding the prevalence of non-physical abuse, alongside recognition of the structural and social factors that sustain it.

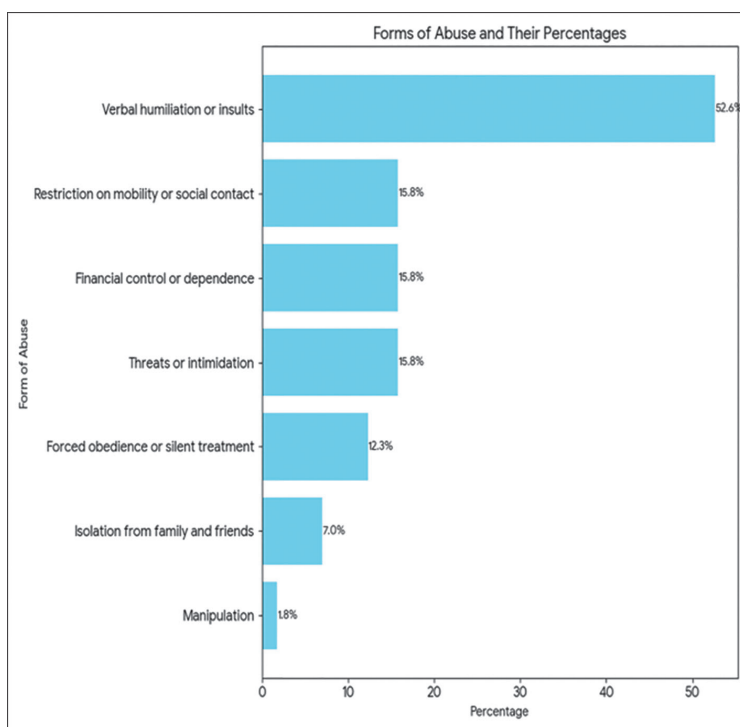
Perceived Prevalence of Psychological Abuse: An overwhelming 94.7 percent of respondents stated that psychological or emotional abuse among Nepali women is "very common," indicating strong collective recognition of emotional violence as a widespread social problem. This perception underscores the normalisation of coercive and non-physical forms of abuse within intimate and familial relationships.

Most Common Forms of Non-Physical Abuse: With regard to the most common forms of non-physical abuse, 73.7 percent identified verbal humiliation or insults as the most prevalent manifestation. Financial control or enforced economic dependence was reported by 56.1 percent, followed by forced obedience or silent treatment (49.1 percent). A significant proportion also highlighted restrictions on mobility or social contact (40.4 percent), threats or intimidation (38.6 percent), isolation from family and friends (26.3 percent), and other forms (1.8 percent). These findings suggest that verbal degradation, economic control, and behavioural regulation are widely perceived as dominant patterns of coercive control.

Reasons Women Stay Silent or Tolerate Abuse: Respondents identified multiple reasons why women remain silent or tolerate psychological abuse. Social stigma or fear of judgement was cited most frequently (77.2 percent), indicating the powerful influence of community perceptions and reputational concerns. Family pressure to remain in marriage and emotional attachment or responsibility towards children were each identified by 54.4 percent of respondents. Economic dependence and lack of awareness of legal rights were both reported by 47.4 percent, while 36.8 percent noted fear of escalation into physical violence. A small proportion (1.8 percent) selected all of above factors. Collectively, these findings highlight social stigma as the most significant barrier, followed by family pressure, emotional ties, and economic dependency, all of which contribute to women remaining in abusive relationships.

Legal Awareness and Personal Experience: Respondents' reported experiences of psychological abuse, alongside their awareness of existing legal protections, reveal a complex dynamic: while legal awareness appears relatively high, personal exposure to non-physical abuse remains significant, and structural barriers continue to impede access to justice.

Personal Experience of Psychological or Emotional Abuse: With respect to personal experience, 40.4 percent of respondents reported having experienced psychological or emotional abuse, while an equal proportion (40.4 percent) reported that they had not. Notably, 15.8 percent responded "maybe", and 3.5 percent preferred not to disclose. The proportion responding "maybe" suggests that certain forms of coercive control may remain unrecognised or normalized, reflecting that subtle and cumulative nature of psychological abuse.

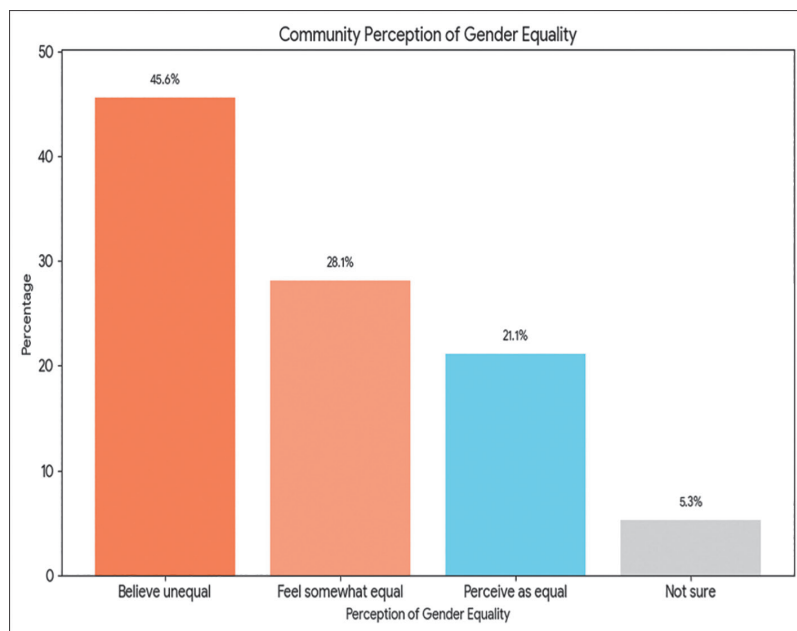


Forms of Abuse Experienced: Among those reporting abuse, verbal humiliation or insults emerged as the most dominant form (52.6 percent). Financial control, threats, and restricted mobility each accounted for 15.8 percent, indicating systematic strategies aimed at limiting independence. Forced obedience was reported by 12.3 percent and social isolation by 7.0 percent. Manipulation was identified by 1.8 percent, though it often underlies broader controlling behaviours. These findings suggest that psychological abuse operated not as isolated incidents but as a patterned course of conduct designed to establish and maintain dominance.

Awareness of Legal Protections: In terms of legal awareness, 86 percent of respondents indicated that they were aware of laws protecting women from domestic or psychological abuse. Only 8.8 percent reported a lack of awareness, while 5.3 percent were unsure. These figures suggest that information regarding women’s rights is reaching a significant proportion of educated respondents, although clarity remains incomplete.

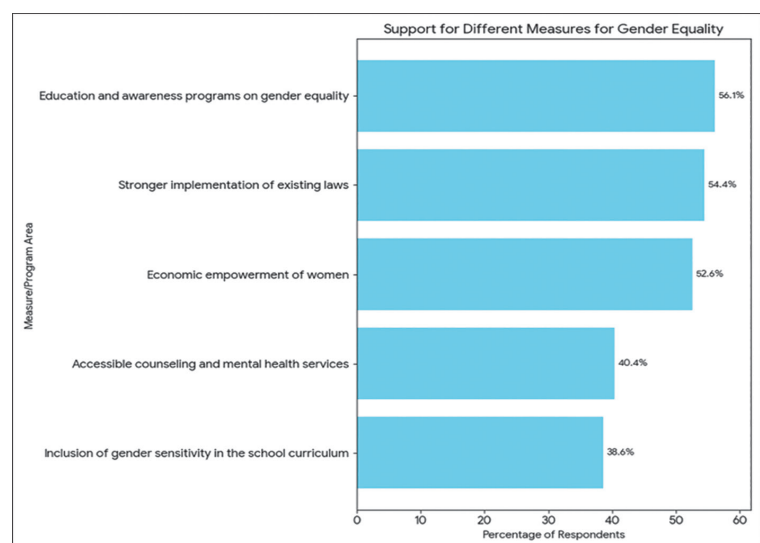
Barriers to Seeking Legal or Social Support: Despite reported awareness, respondents identified substantial barriers to seeking legal or social support. The most frequently cited obstacle was lack of awareness about legal rights (66.7 percent), followed closely by fear of social stigma (63.2 percent) and family pressure not to take action (54.4 percent). Additionally, 38.6 percent identified financial costs or difficulty accessing services as impediments, while 1.8 percent other reasons. These findings indicate that knowledge gaps, stigma, and entrenched family dynamics significantly constrain women’s capacity to pursue justice or assistance.

Perceptions and Way Forward on Gender Equality and Abuse



Community Perception of Gender Equality: A significant proportion of respondents perceive that gender equality has not fully been achieved within their communities. Nearly half (45.6 percent) explicitly stated that equality remains unequal. While a combined 49.2 percent considered the situation “somewhat equal” (28.1 percent) or “equal” (21.1 percent), the strong perception of inequality reflects enduring gender disparities. This critical outlook mirrors the reported prevalence of non-physical abuse, suggesting that persistent gender norms and social expectations continue to shape community dynamics.

Changes Needed to Promote Gender Equality and Prevent Psychological Abuse: Participants emphasized the need for comprehensive reforms, highlighting strong education and awareness programmes (56.1 percent) and stronger legal implementation (54.4 percent) as priorities. Economic empowerment (52.6 percent) and accessible mental health services (40.4 percent) were also identified as essential components of reform. These findings suggest that legal knowledge along is insufficient; reducing silene driven by stigma and dependency requires multi-dimensional interventions addressing structural inequality.



Message for Policymakers and Community Leaders: Respondents called for structural and policy reform, with 68.4 percent urging policymakers to prioritise mental health within public policy frameworks. Legislative strengthening was emphasized by 56.1 percent, particularly the need for effective laws that specifically addressing psychological abuse. Nationwide gender equality education was supported by 52.6 percent of respondents. Community-level engagement also emerged as important, with 38.6 percent supporting collaboration with youth and universities to foster awareness. Smaller proportions highlighted the eradication of myths and the provision of free counseling (1.8 percent each) related to women's mental health. Overall, these responses indicate a strong demand for policy-level action, enhanced mental health integration, and sustained community collaboration to create safer environments for women.

Collectively, these findings demonstrate high awareness of psychological abuse and coercive control among respondents, alongside significant personal exposure to non-physical violence. However, structural barriers, social stigma, economic constraints, and entrenched gender norms continue to limit women's capacity to seek protection and redress. The results therefore underscore the necessity of comprehensive, multi-level interventions that integrate legal reform, mental health services, economic empowerment, and community-based transformation to address psychological abuse and coercive control effectively.

Addressing Psychological Abuse and Coercive Control in Nepal

This study demonstrates that psychological abuse and coercive control are widespread yet insufficiently recognised forms of domestic violence in Nepal. While physical and sexual violence receive greater public attention and policy focus, non-physical forms -commonly understood as emotional abuse – such as verbal humiliation, financial control, social isolation, and sustained patterns of domination exert profound and enduring effects on women's mental health, autonomy, and social well-being. Nearly 40 percent of respondents reported having personally experienced psychological abuse, and an overwhelming majority perceived it be common within Nepali society.

Although 87.3 percent of respondents indicated awareness of existing legal protections, structural and socio-cultural barriers continue to impede access to justice. Social stigma, family pressure, and economic dependence were consistently identified as primary deterrents to reporting abuse or seeking support. Addressing psychological abuse and coercive control as central components of domestic violence is therefore essential for policymakers, judicial actors, service providers, and community stakeholders. Preventive strategies grounded in early intervention, legal education, counselling, and economic empowerment initiatives are essential to protect women's dignity, autonomy, and mental well-being.

Legal and Policy Enforcement

- Strengthen implementation of the *Domestic Violence (Crime and Punishment) Act (2008)* to ensure that women can safely report psychological abuse and receive timely protection and remedies.
- Address structural barriers to justice, particularly social stigma and family pressure, which persist despite relatively high levels of legal awareness. Legal enforcement mechanisms must be responsive to these entrenched socio-cultural obstacles.

Public Awareness and Education

- Enhance public awareness campaigns and community-based programmes to improve understanding of psychological abuse, coercive control, and women's legal rights, and available support services.
- Conduct gender-sensitive educational workshops aimed at challenging patriarchal norms and harmful social practices. Notably, only 45.5% of respondents explicitly recognised psychological abuse as a form of violence, indicating the need for conceptual clarity.

- Engage men and boys in educational activities to promote respectful relationships and prevent controlling behaviours at an early stage.

Mental Health and Support Services

- Expand access to confidential and affordable counselling services to support survivors in addressing the emotional and psychological consequences of abuse. The finding that approximately 40 percent of respondents reported personal experience of psychological abuse highlights the urgency of integrating mental health services into domestic violence responses.
- Establish safe spaces and peer support networks to enable women to share experiences, access guidance, and build collective resilience.

Economic and Social Empowerment

- Promote women's economic empowerment through skills development, employment opportunities, and financial literacy programmes to reduce economic dependency on abusive partners.
- Collaborate with local leaders, civil society actors, and community institutions to challenge entrenched norms that perpetuate psychological abuse and silence survivors.
- Address social stigma, identified by 76.4% of respondents as a primary reason for tolerating abuse, to create an enabling environment in which survivors feel empowered to seek assistance.

Collectively, these measures would contribute to a more comprehensive and rights-based response to psychological abuse and coercive control. By aligning legal frameworks with lived realities and addressing structural inequalities, such reforms would strengthen substantive gender equality and enhance the protection of women's dignity and psychological integrity.

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Bridging Legal Frameworks and Ground Realities: Access to Sexual and Reproductive Health Rights in Rural Nepal

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Abstract

Sexual and reproductive health rights (SRHR) are integral to the broader human rights framework; however, their realisation remains uneven in Nepal, particularly in rural areas. Although the Constitution of Nepal (2015) and subsequent legislation, including the Safe Motherhood and Reproductive Health Rights Act (2018), codify rights related to safe motherhood, family planning, and abortion, practical access remains limited. This study examines the gap between legal provisions and lived realities through a mixed-methods approach, combining doctrinal legal analysis with empirical data collected from 47 married women of reproductive age in Belauri Municipality, Kanchanpur District. The findings indicate that while awareness of family planning and safe abortion services is moderate, knowledge of legal entitlements and effective utilisation of services remains low. Early marriage, limited access to healthcare, socio-cultural stigma, and restricted decision-making autonomy significantly constrain women's ability to exercise their reproductive rights. Furthermore, deficiencies in service quality, accessibility, and public awareness hinder the effective implementation of existing legal provisions. The study highlights the need for targeted policy interventions, including comprehensive sexuality education, strengthened health service delivery, and community-based awareness programmes. Bridging the gap between law and practice is essential to ensure that reproductive rights are accessible, equitable, and effectively realised in Nepal.

Keywords: *Sexual and reproductive health rights (SRHR), reproductive rights in Nepal, maternal health services, abortion and safe abortion, gender and autonomy*

Introduction

For nearly twenty-five years, Nepal has aligned itself with the global consensus recognising SRHR as central to gender equality, public health, and sustainable development. Following the adoption of the Programme of Action at the International Conference on Population and Development (ICPD) in 1994 and its reaffirmation at the Fourth World Conference on Women in 1995, Nepal has consistently expressed its commitment to advancing women's sexual and reproductive autonomy. This commitment is further reflected in Nepal's pledge to achieve universal access to SRHR under Targets 3.7 and 5.6 of the United Nations Sustainable Development Goals (SDGs).

At the domestic level, the Constitution of Nepal (2015) explicitly guarantees that "every woman shall have the right to safe motherhood and reproductive health," situating reproductive rights within the broader fundamental right to health. This constitutional recognition creates normative and legal space for women to assert autonomy over their bodies and reproductive lives. Reproductive rights encompass not only access to quality health services and accurate information, but also freedom from coercion, discrimination, and violence, including forced pregnancy, forced abortion, forced sterilisation, and other forms of sexual abuse. They are intrinsically linked to a range of human rights, including the rights to life, health, privacy, education, equality, and freedom from torture and discrimination.

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Historically, Nepal recorded one of the highest maternal mortality ratios in South Asia (International Journal of Health Sciences and Research, 2012). Between 1996 and 2016, the maternal mortality ratio declined significantly—from 539 to 239 maternal deaths per 100,000 live births—reflecting substantial progress in reproductive health governance (Ministry of Health, Nepal, New ERA, & ICF, 2017). This decline can be attributed to important legal and policy milestones. Prior to 2002, abortion was criminalised under all circumstances, and unsafe abortion accounted for approximately 20 percent of pregnancy-related deaths in 2000 (Forum for Women, Law and Development [FWLD], 2020). The legalisation of abortion in 2002 marked a transformative shift and contributing to measurable reductions in maternal mortality and morbidity. Subsequent reforms, including the enactment of the Safe Motherhood and Reproductive Health Rights Act (SMRHR Act) and the revision of Safe Abortion Service (SAS) Programme guidelines in 2016 providing free abortion services as part of the basic reproductive health care package have further institutionalised reproductive health protections.

Notwithstanding these advancements, violations of reproductive rights persist. Women continue to face barriers in accessing quality services, alongside instances of non-consensual procedures, forced sterilisation, virginity testing, and other coercive practices (United Nations Population Fund [UNFPA], 2021). These realities underscore a critical gap between normative guarantees and lived experiences. Against this backdrop, this study examines the conceptual foundations of reproductive rights, analyses the adequacy and effectiveness of Nepal's legal and policy framework, and assesses implementation at both doctrinal and empirical levels. Employing a mixed-methods approach that combines legal analysis with field-based research conducted among married women of reproductive age in Belauri Municipality, Ward No 6, Kanchanpur District, the study seeks to evaluate whether existing legal provisions sufficiently facilitate reproductive rights and address evolving health challenges.

The research contributes to scholarly and policy discourse on strengthening comprehensive legal and administrative mechanisms to ensure equitable access to reproductive health services. By interrogating the relationship between law, policy implementation, and women's lived realities, the study aims to advance a rights-based framework that moves beyond formal recognition towards substantive realisation of reproductive justice in Nepal.

Conceptual Framework on Sexual and Reproductive Health Rights: A Human Rights-Based Approach

Normative Foundations of Sexual and Reproductive Health and Rights

Reproductive rights are recognised as fundamental human right within international human rights law (International Conference on Population and Development [ICPD], 1994). According to the World Health Organization (WHO), reproductive rights are grounded in the recognition of the right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children, and to have the information and means to do so. They further include the right to attain the highest attainable standard of sexual and reproductive health and to make decisions concerning reproduction free from discrimination, coercion and violence (WHO, 2015).

The normative articulation of reproductive rights was consolidated in the Programme of Action adopted in the ICPD, which affirms that reproductive rights derive from existing human rights norms and are grounded in principles of equality, dignity and autonomy. The language of the ICP reflects Article 16(1)(e) of the International Convention on Elimination of all forms of Discrimination against Women (CEDAW), which obliges States Parties to ensure, on a basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means necessary to exercise these rights (Shalev, 1998).

SRHR extend beyond fertility regulation. They encompass the right of every person, regardless of age, ethnicity,

sexual orientation, HIV status, or other aspects, to make informed and meaningful decisions regarding sexuality and reproduction. This includes access to comprehensive family planning services, safe abortion where lawful, prevention and treatment of sexually transmitted infections (STIs), including HIV, as well as access to accurate information and education (ActionAid, 2016).

The Guttmacher–Lancet Commission conceptualises SRHR as an overarching framework comprising four interrelated domains: sexual rights, sexual health, reproductive rights, and reproductive health (Starrs et al., 2018). Sexual health refers to physical, emotional, psychological, and social well-being in relation to sexuality. It entails not merely the absence of disease, but the integration of somatic, emotional, and relational aspects of sexual life in ways that enhance dignity, communication, and personal fulfilment (World Health Organization, 1975, as cited in Edwards & Coleman, 2004). Thus, reproductive rights incorporate pre-existing human rights recognised in national constitutions, international treaties, and global consensus documents. They require the protection of bodily autonomy, informed consent, equality, and freedom from violence (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2014), forming an indispensable component of the broader human rights framework.

Importance of Sexual and Reproductive Rights

Sexual and reproductive rights (SRR) are intrinsically linked to a range of rights that directly affect women's autonomy and life choices, including the right to marry, the choice of sexual partner, access to contraceptives, family planning, safe motherhood, and adequate health services during and after pregnancy. These rights enable women to make informed and independent decisions concerning their bodies, sexuality, and reproductive lives.

The protection of reproductive health and reproductive rights contributes significantly to broader socio-economic development. Ensuring women's reproductive autonomy helps prevent maternal deaths, improves child survival, lowers unintended fertility rates, enhances female labour force participation, and contributes to poverty reduction and economic growth (United Nations Population Fund [UNFPA], 2021). Effective realisation of reproductive rights also strengthens women's status within society and promotes substantive gender equality (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2014).

Internationally, women's sexual and reproductive rights have been reinforced through commitments adopted at major global conferences, including the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), and the Fourth World Conference on Women (Beijing, 1995). These global forums transformed reproductive rights from policy aspirations into integral components of the international human rights framework. From a broader perspective, SRHR are essential because they recognise the self-determination of individuals and couples in reproductive decision-making; ensure autonomy in determining the number and spacing of children; contribute to the achievement of the SDGs, particularly those relating to maternal health, child health, and gender equality; and empower individuals to make informed decisions affecting their lives through a rights-based approach.

Human Rights and the International Legal Framework on Women's Sexual and Reproductive Health Rights

SRR are intrinsically linked to a broad spectrum of internationally recognised human rights, and their realisation depends on the effective protection of these interdependent guarantees. The right to life, enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), is directly implicated where preventable maternal deaths or the denial of essential reproductive health services occur. Similarly, the right to liberty and security of the person requires voluntary and informed consent in matters relating to sexuality

and reproduction, as affirmed in the Programme of Action of the ICPD and the Fourth World Conference on Women. The right to the highest attainable standard of health, recognised under the International Covenant on Economic, Social and Cultural Rights (ICESCR), encompasses sexual and reproductive health services as an indispensable component of physical, mental, and social well-being.

The right to decide freely and responsibly on the number and spacing of children—explicitly recognised under the CEDAW, together with the principles of equality and non-discrimination, safeguards women’s access to healthcare, education, and reproductive decision-making. Additional rights, including the rights to privacy, equality within marriage, and freedom from torture or cruel, inhuman, or degrading treatment, as protected under the ICCPR and the Convention against Torture (CAT), protect individuals from forced sterilisation, sexual violence, harmful traditional practices, and other coercive measures. Access to comprehensive sexuality education and family planning information is essential for informed reproductive decision-making and constitutes a cornerstone of reproductive autonomy.

CEDAW further operationalises these rights by obliging States to eliminate discrimination both in law and in practice. Article 10(h) guarantees access to educational information on family planning, Article 11 protects women’s reproductive function within employment, Article 12 mandates equal access to healthcare services related to pregnancy, childbirth, and family planning, and Article 14 extends these protections specifically to rural women. Complementary instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), reinforce equality in access to health services by requiring States to address structural discrimination affecting marginalised women.

Global policy commitments—including the ICPD (1994), the Beijing Platform for Action (1995), and the five-year review of the ICPD at The Hague (1999)—have further strengthened the recognition of reproductive health as a legally protected human right that is central to individual dignity, gender equality, and sustainable development. Collectively, these instruments establish that women’s sexual and reproductive health is not merely a public health concern but a legally protected human right requiring States to guarantee substantive equality, accessible and high-quality healthcare services, and effective measures to eliminate discrimination and coercion in all matters relating to sexuality and reproduction.

National Legal Provisions and Judicial Interpretation of Sexual and Reproductive Health Rights in Nepal

Constitutional Framework

Nepal’s constitutional history reflects a gradual recognition of reproductive rights. The Government of Nepal Act (2004 B.S.) recognised the right to equality but did not specifically address reproductive rights. The Interim Government of Nepal Act (2007 B.S.) introduced provisions on maternity assistance (Article 7) and mandated special protection for women and children under Article 14(2). The Constitution of Nepal (2015 B.S.) guaranteed equality and civil and political rights but did not explicitly secure reproductive rights such as maternity assistance. The Constitution of Nepal (2019 B.S.) allowed for special provisions to protect and advance the interests of women under Article 17(2). Subsequently, the Constitution of the Kingdom of Nepal (2047 B.S.) guaranteed the right to equality, while the Directive Principles under Articles 25 and 26 imposed positive obligations upon the State to prioritise women’s health.

Notably, the Interim Constitution of Nepal (2063 B.S.) explicitly recognised the right to reproductive health as a fundamental right under Article 20(2). The current Constitution of Nepal (2072 B.S.) provides more comprehensive protection, guaranteeing the right to safe motherhood and reproductive health under Article 38(2), along with related

rights such as the right to live with dignity, equality, privacy, protection against exploitation, and the right to health.

National Legislation

National Penal Code (2017)

The National Penal Code (2017) safeguards women's reproductive rights by regulating abortion. Abortion is prohibited except under specific circumstances outlined in Section 189, and no person may coerce or compel a pregnant woman to undergo an abortion through fraud, undue influence, or coercion.

The Code also prescribes penalties for unlawful abortions under Section 188. Termination of pregnancy without lawful grounds up to twelve weeks may result in imprisonment for up to one year and a fine of up to ten thousand rupees. For pregnancies between twelve and twenty-five weeks, the punishment increases to three years' imprisonment and a fine of thirty thousand rupees, while abortions beyond twenty-five weeks may result in up to five years' imprisonment and a fine of fifty thousand rupees. At the same time, the law permits abortion under certain conditions, such as with the woman's consent within twelve weeks of pregnancy or in cases involving rape, incest, or risks to the woman's health, thereby balancing the regulation of abortion with the protection of reproductive rights.

Act Relating to Safe Motherhood and Reproductive Health Rights (2018)

The Act Relating to Safe Motherhood and Reproductive Health Rights (2018) was enacted to ensure safe motherhood, protect reproductive rights, and provide accessible, affordable, and quality reproductive health services. Under Schedule 2, Section 3, the Act guarantees the right to education, information, counselling, and services related to sexual and reproductive health. It affirms women's rights to safe maternity, control over birth spacing and the number of children, access to contraceptives, adequate nutrition, rest during pregnancy, emergency care for both mother and newborn, and confidentiality in reproductive health services. The Act further outlines provisions relating to pregnancy and maternity services (Schedule 3, Sections 6–13), including regular prenatal check-ups, skilled maternity care, birth registration, and the issuance of relevant certificates. It ensures access to family planning services without coercion and provides maternity leave of 98 days with the possibility of extension, paternity leave of 15 days, and breastfeeding breaks until the child reaches two years of age.

Safe abortion is regulated under Schedule 4 (Sections 15–19), permitting abortion up to twelve weeks with the woman's consent and up to twenty-eight weeks under specific circumstances, such as risks to the woman's life or health, rape, HIV infection, or foetal abnormalities. The Act also prohibits forced or sex-selective abortions and mandates that abortion services be provided only by qualified and licensed health institutions while maintaining strict confidentiality.

Additional provisions aim to prevent discrimination, promote disability-friendly environments, ensure free reproductive health services and pregnancy allowances, and establish a Reproductive Health Coordination Committee to guide policy implementation. Sections 25–27 provide enforcement mechanisms, including penalties and compensation provisions, with the District Court designated as the court of first instance and appeals available before the High Court. Complaints must be filed within six months from the date the victim becomes aware of the offence.

Collectively, these legislative provisions provide a comprehensive legal framework to safeguard reproductive rights in Nepal, ensuring access to healthcare, reproductive autonomy, safe motherhood, and protection from coercion, discrimination, and harmful practices.

Judicial Interpretation

The Supreme Court of Nepal has delivered several landmark decisions that have strengthened the protection of reproductive rights by addressing legal gaps and imposing obligations on the government to ensure comprehensive reproductive health protections.

In *Laxmi Dhikta v. Government of Nepal* (2066 B.S.), the petitioner sought a directive order requiring the government to ensure safe and accessible abortion services so that women would not be compelled to continue pregnancies due to financial constraints. The Supreme Court directed the government to enact comprehensive abortion legislation, establish a fund to cover abortion-related services, safeguard women's privacy, and disseminate information on safe abortion practices nationwide.

In *Dil Bahadur B.K. v. Government of Nepal* (2062 B.S.), the Court addressed the harmful traditional practice of chhaupadi. It issued directives to the Office of the Prime Minister and relevant ministries to declare chhaupadi a harmful social practice ("kuriti"), conduct nationwide awareness programmes, and prepare research-based reports on its prevalence and strategies for its elimination.

In *Bimala Khadka et al. v. Government of Nepal* (2067 B.S.), the petition sought protection of reproductive health rights for women with disabilities. The Supreme Court directed the government to ensure accessibility of hospitals, public transportation, and public infrastructure, and to effectively implement constitutional and international protections to safeguard reproductive health rights for women with disabilities.

Similarly, in *Prakash Mani Sharma v. Office of the Prime Minister et al.* (2063 B.S.), the petitioner raised concerns regarding inadequate care and protection for pregnant and breastfeeding women in prisons. The Court directed the government to ensure appropriate healthcare services, facilities, and protection for pregnant and breastfeeding inmates, as well as proper care for their children within correctional facilities.

Collectively, these judicial decisions reinforce the State's responsibility to protect reproductive rights and ensure accessible, gender-sensitive health services.

Knowledge, Autonomy, and Access: Sexual and Reproductive Health Rights in Rural Nepal

Awareness and Utilisation of Sexual and Reproductive Rights

A study was conducted to assess the level of awareness and utilisation of reproductive rights among women of reproductive age. The study engaged 47 married women residing in Ward No. 6 of Belauri Municipality, Kanchanpur District. Respondents represented different ethnic groups and religions, and all participants had at least one child. Out of the total 47 respondents, only 27 reported having knowledge of reproductive rights. The most commonly recognised component of reproductive rights was family planning (74.46 percent). However, awareness was considerably lower regarding women's rights (40.42 percent) and abortion rights (37.54 percent) as integral components of reproductive rights. Although 72.34 percent of respondents were aware of the right to receive sex education, only 30.82 percent believed that such education should be provided before the age of 16. Moreover, only 31.92 percent correctly identified the legal age of marriage as 20 years.

While 74.46 percent of respondents were aware of family planning methods, knowledge regarding appropriate birth spacing (38.3 percent) and women's decision-making authority in family planning (40.42 percent) remained limited.

With regard to abortion, 76.59 percent of respondents were aware of safe (institutional) abortion services; however, only 38.29 percent were aware that abortion is legal in Nepal. Furthermore, only 29.78 percent recognised abortion as a voluntary right of women. Among the 36 respondents who were aware of safe abortion services, 77.77 percent correctly identified that abortion is permissible within twelve weeks of pregnancy under general conditions. Only 25 percent were aware that abortion is permitted in cases of congenital anomalies. Additionally, 36.11 percent knew that abortion is allowed up to eighteen weeks in cases of rape or incest, while 58.33 percent recognised that abortion is permissible at any stage of pregnancy if the mother's life or health is at clinical risk.

The findings further indicate that 61.7 percent of respondents had received sex education at some point in their lives; however, only 48.93 percent received it at an appropriate age. Similarly, 51.06 percent of respondents were married at the legally prescribed age. Only 38.29 percent reported becoming pregnant by their own choice. In terms of family planning practices, 59.57 percent had utilised some form of contraceptive method, and 61.75 percent reported participating in decision-making regarding family planning. However, only 40.42 percent maintained appropriate birth spacing. Additionally, 53.19 percent of respondents reported receiving counselling services related to family planning. With respect to abortion, 48.93 percent of respondents had undergone an abortion at some point in their lives. Among them, 17.39 percent reported making the decision independently, while 30.43 percent decided jointly with their husbands.

Concerning maternal health services, 72.34 percent completed four or more antenatal care (ANC) visits during their last pregnancy, and a statistically significant association was observed between knowledge of ANC and the actual utilisation of ANC services. Furthermore, 78.72 percent delivered their last child in a health institution, and 61.7 percent attended postnatal care (PNC) visits during the postnatal period. These findings indicate significant gaps in awareness, particularly regarding reproductive autonomy, legal entitlements, and informed decision-making. They also reflect partial awareness of the legal framework governing abortion, with notable gaps concerning specific legal grounds and conditions.

Knowledge and Sources of Information on Sexual and Reproductive Rights

More than half of the respondents demonstrated general awareness of SRR; however, such knowledge was limited and often confined primarily to family planning. Awareness of the legalisation of abortion was comparatively low, suggesting that public health messaging may emphasise contraception and childbearing while insufficiently addressing women's broader reproductive autonomy.

Limited literacy, inadequate rights-based education, and entrenched patriarchal norms appear to contribute to these gaps in awareness. Health workers were identified as the primary sources of information, followed by radio and television, likely reflecting women's interactions with healthcare providers during routine check-ups and their exposure to public health programmes. Newspaper-based awareness was comparatively lower, which may correlate with literacy constraints and limited access to print media.

Very few respondents reported learning about reproductive rights from family members, highlighting the persistence of social taboos surrounding discussions of sexuality. Younger women appeared relatively more informed, potentially due to increased access to the internet and social media platforms.

Sexuality Education and Early Marriage

Approximately 72.34 percent of respondents were aware of the right to receive sex education; however, only 61.7 percent had ever received such education, and merely 48.93 percent obtained it at an appropriate age. While 31.92

percent recognised the importance of providing sex education before the age of 16, many believed that such education should begin only after menarche, reflecting limited understanding of the importance of pre-pubertal sexuality education.

Regarding marriage, 51.06 percent were aware that the legal age of marriage is 20 years, yet only 50.37 percent were married at the legally prescribed age. The continued prevalence of early marriage, despite legal prohibition, reflects persistent socio-cultural, religious, and economic pressures. Early marriage frequently disrupts girls' education, increases vulnerability to domestic and sexual violence, and heightens the risks associated with early pregnancy and HIV infection.

Family Planning, Birth Spacing, and Reproductive Decision-Making

Awareness of family planning was relatively high (74.46 percent); however, only 38.3 percent possessed knowledge regarding appropriate birth spacing, and 34.04 percent reported maintaining adequate spacing between successive births. Barriers to effective utilisation may include limited access to services and insufficient counselling.

Although 40.42 percent of respondents were aware of their decision-making rights in family planning, 61.7 percent reported participating in decision-making either independently or jointly with their husbands. While this reflects encouraging levels of participation, male dominance in reproductive decision-making remains evident. Knowledge and utilisation of family planning decision-making rights demonstrated a statistically significant association. Similarly, 40.09 percent were aware of the right to voluntary pregnancy, and 38.29 percent reported becoming pregnant by choice.

Maternal Health Services and Institutional Care

Utilisation of maternal health services showed moderate progress. Thirty-four respondents completed four antenatal care visits during their last pregnancy, and institutional delivery rates were relatively high. However, non-utilisation persists due to socio-cultural, economic, and logistical barriers. Knowledge and utilisation of postnatal care services were moderate, consistent with findings from similar studies. Although awareness and utilisation of reproductive health services generally demonstrated statistically significant associations, this relationship was not observed in relation to institutional delivery.

Abortion Awareness and Autonomy

While awareness of safe abortion services was comparatively high, knowledge of the legal grounds for abortion remained limited. Only 29.78 percent were aware of the primary legal conditions for abortion, and awareness of additional permissible circumstances was even lower. Social stigma, limited reproductive rights education, and dependence on medical practitioners may partly explain these gaps. Despite some level of awareness, the utilisation of abortion services does not fully reflect legal entitlements, suggesting the presence of socio-cultural constraints on women's autonomy. Reported reasons for abortion included unwanted pregnancy, son preference, and health complications.

Given that abortion constitutes a core component of reproductive rights, women—irrespective of marital status—must be able to exercise this right autonomously and without coercion.

Both awareness and utilisation of reproductive rights are critical determinants of maternal and child health outcomes. Although the study population demonstrated moderate levels of awareness and service utilisation, significant gaps remain, particularly in relation to legal literacy and substantive reproductive autonomy. Continued awareness programmes and larger-scale empirical studies are necessary to generate generalisable data and to inform rights-based

policy interventions aimed at strengthening sexual and reproductive health rights in Nepal.

Legal Doctrine and Ground Realities: Bridging Normative Frameworks and Empirical Findings

In the contemporary context, reproductive rights are recognised in a more comprehensive manner in Nepal; however, violations persist in both public and private spheres. The research reveals a dual reality: significant normative and legislative progress alongside persistent structural and socio-cultural challenges. Nepal appears to be in a phase of progressive realisation of reproductive rights, marked by important constitutional and statutory advancements.

Constitutional and Legal Recognition of Reproductive Rights

The Constitution of Nepal explicitly guarantees reproductive health as a fundamental right under Article 38. This constitutional recognition is further operationalised through sectoral legislation and policy frameworks. Notably, the Right to Safe Motherhood and Reproductive Health Act establishes the State's obligation to respect, protect, and fulfil women's reproductive health rights by ensuring safe, quality, accessible, and affordable services. Similarly, the National Penal Code legalises abortion under specified conditions, thereby reinforcing women's autonomy in reproductive decision-making. These legal reforms reflect Nepal's progressive realisation of reproductive rights within a rights-based framework.

Social Protection Measures and Institutional Support

Significant progress has also been observed in employment-related protections. Paid maternity leave has been guaranteed for women employees—generally for up to 60 days before or after childbirth, available twice during the period of service. In many public service frameworks, paternity leave (typically 15 days) has also been introduced, reflecting a gradual recognition of shared caregiving responsibilities. Additionally, postnatal financial support (approximately NPR 5,000) is provided to assist mothers in childcare. These measures demonstrate the State's growing commitment to reproductive justice and maternal welfare.

Gaps in Service Delivery and Access to Family Planning

Despite these legal advancements, substantial gaps remain in implementation. The descriptive study indicates the limited availability of permanent family planning methods in the vicinity of respondents' residences, compelling many women to travel considerable distances to access such services. Several respondents also reported adverse health consequences following sterilisation procedures, suggesting deficiencies in counselling, informed consent processes, and post-operative care. Adolescents were found to have limited access to comprehensive sexuality education, including information on safe sex, family planning, reproductive health standards, and bodily autonomy. This informational gap undermines young people's ability to make informed decisions regarding their sexual and reproductive lives.

Uterine Prolapse and Structural Health Neglect

The study revealed a relatively high prevalence of uterine prolapse, particularly among women married before the age of 20, women with high parity, and women with limited educational attainment. There appears to be insufficient institutional attention within the government health delivery system to address this condition systematically. Levels of service satisfaction were reported to be relatively low, indicating structural deficiencies in the quality, accessibility, and responsiveness of reproductive health services. Women's empowerment, delayed marriage, reduced frequency of pregnancies, and improved educational opportunities emerge as critical preventive strategies. Rural women were found to possess significantly lower levels of knowledge regarding sexual and reproductive health compared with their

urban counterparts, illustrating geographical inequalities in access to information and healthcare services.

Intersection with Violence and Reproductive Harm

The findings also highlight the intersection between reproductive health and gender-based violence. Domestic violence was reported to contribute to uterine prolapse and foetal loss, while sexual violence frequently resulted in unwanted pregnancies. These patterns underscore that violations of reproductive rights are not merely medical concerns but are deeply embedded within broader socio-cultural and structural inequalities.

Conclusion and Policy Recommendations: Bridging Law, Rights, and Implementation Gaps in Reproductive Health in Nepal

Sexual and reproductive health is integral to human dignity and is inextricably linked with the realisation of fundamental rights, including the rights to health, equality, privacy, and freedom from discrimination, torture, and ill-treatment. Nepal has constitutionally recognised reproductive rights as a fundamental right under Article 38 of the Constitution of Nepal (2015), and the enactment of the Right to Safe Motherhood and Reproductive Health Rights Act (2018) represents significant legislative progress. Nevertheless, the effectiveness of these guarantees depends upon robust implementation, which remains inconsistent.

Although abortion, family planning, and maternal health have been partially addressed through the National Penal Code (2017) and related legal frameworks, regulatory gaps persist, particularly in areas such as surrogacy and comprehensive reproductive governance. Structural barriers—including poor service quality in public health institutions, geographical inaccessibility, socio-economic disparities, patriarchal decision-making structures, and persistent social stigma—continue to obstruct meaningful access to reproductive health services. Rural women, adolescents, and marginalised communities remain disproportionately affected.

Reproductive health policy continues to be narrowly fertility-focused and insufficiently integrates broader socio-economic determinants and rights-based accountability mechanisms. Weak enforcement of existing laws, limited quality assurance mechanisms, and inadequate compliance with international human rights standards further exacerbate these deficiencies. Nepal appears to be in a phase of progressive realisation of reproductive rights; however, substantive equality and universal access have yet to be fully achieved.

Elimination of Discrimination and Promotion of Gender Equality: Reproductive rights cannot be realised without substantive gender equality. The State must ensure non-discriminatory access to reproductive health services regardless of caste, socio-economic status, geographic location, disability, or marital status. Policies should address structural inequalities, gender-based violence, and coercion in reproductive decision-making.

Comprehensive Sexuality Education: Age-appropriate and culturally contextualised sexuality education should be institutionalised within secondary school curricula. Informed awareness strengthens individual autonomy, reduces early marriage and unintended pregnancies, and promotes responsible reproductive decision-making.

Strengthening Women's Autonomy and Bodily Integrity: The State should actively promote women's decision-making power in matters relating to fertility, contraception, and marriage. Mass awareness campaigns, community mobilisation initiatives, and strict legal action against coercion—including by family members—are necessary to operationalise reproductive autonomy.

Effective Implementation and Institutional Strengthening: Legal recognition alone is insufficient. The implementation of the Right to Safe Motherhood and Reproductive Health Rights Act must be strengthened through

the expansion of antenatal and postnatal services at local health posts, improved quality assurance mechanisms in Primary Health Care Centres, competency-based training and supervision of health personnel, regular monitoring and accountability mechanisms, and the integration of reproductive morbidity screening, including cervical and uterine health services.

Addressing Service Gaps and Marginalisation: Targeted interventions are required for adolescents, rural populations, and socio-economically marginalised women. Community-based counselling, improved access to contraceptive services, safe abortion care, and programmes addressing uterine prolapse prevention and treatment should be prioritised.

While Nepal has made commendable normative progress in recognising reproductive rights, the gap between constitutional guarantees and lived realities remains significant. A rights-based, intersectional, and implementation-oriented approach is therefore indispensable to ensure that reproductive rights are not merely formally recognised but are meaningfully realised for all.

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Reproductive Rights in Transition: Navigating Emerging Assisted Reproductive Technologies and Reproductive Autonomy in Nepal

Rohika K.C.**

Abstract

Assisted reproductive technologies (ART) have emerged as transformative medical interventions for the treatment of infertility and have contributed to reshaping traditional understandings of family and parenthood. However, their rapid expansion in Nepal has occurred in the absence of adequate regulatory oversight. The lack of a comprehensive legislative framework governing ART has generated significant vulnerabilities within reproductive healthcare delivery, raising critical concerns regarding reproductive autonomy, ethical standards in clinical practice, and the protection of marginalised populations in Nepal's evolving legal landscape. This research examines regulatory gaps within Nepal's ART sector through doctrinal legal analysis and stakeholder engagement, investigating the intersection between technological advancement, reproductive rights, and ethical governance. The findings highlight the urgent need for a stronger regulatory framework addressing licensing, informed consent, legality, accessibility, and affordability. The study argues for the necessity of revising existing legal provisions to accommodate the distinct medical and socio-legal challenges posed by ART. It calls for the enactment of comprehensive, rights-based ART legislation, supported by an independent regulatory authority and integrated within the public health system. Without structured and enforceable reform, ART risks reinforcing existing social and economic inequalities rather than advancing reproductive justice in Nepal.

Keywords: *Assisted reproductive technologies (ART), reproductive rights, kinship transformation, gender and social hierarchies, regulatory framework in Nepal*

Introduction

Infertility is clinically recognised as a disease of the reproductive system that impairs one of the body's most fundamental functions: the ability to conceive (Zegers-Hochschild et al., 2017). It is generally defined as the inability to achieve a successful pregnancy based on the basis of a patient's medical, sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of these factors (American Society for Reproductive Medicine [ASRM], 2023). Despite its medicinal characterisation, infertility has historically been under-recognised and often trivialised as a private misfortune rather than a substantive public health issue.

At the global level, approximately 17.5 percent of the adult population, nearly one in six individuals experience infertility (World Health Organization [WHO], 2023). Despite the magnitude of the issue, access to prevention, diagnosis, and treatment remains limited due to structural barriers such as inadequate funding, restrictive legal frameworks, social stigma, and financial costs (Mackay, Taylor & Glass, 2023). In Nepal, this neglect is particularly striking. Although the country celebrated the birth of its first test-tube baby in 2004 through in vitro fertilisation (IVF) (Yogi, 2005), assisted reproductive technologies (ART) have proceeded in the absence of a comprehensive legal and regulatory framework.

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The implications of infertility extend beyond clinical diagnosis. Scholars have consistently highlighted that infertility constitutes not only a medical and psychological condition but also a profound social phenomenon (Noorbala, et al., 2009). In many Asian societies, including Nepal, childbearing is closely tied to cultural, social, and religious expectations often placing greater emphasis on reproduction than in many Western contexts (Balen & Inhorn, 2002). Parenthood is frequently regarded as a marker of adulthood and a source of social status, particularly for women (Aronson, 2008). The inability to fulfil this expectation may lead to stigma, marital strain, and feelings of inadequacy. In the Nepali context, entrenched patriarchal norms and son preference further intensify these pressures, as the birth of a male child is widely perceived to carry symbolic and social value. Consequently, infertility is often associated with grief, depression, social exclusion, and, in some instances, marital conflict (Greil, 1997).

Within this socio-cultural context, ART emerges as both a medical innovation and a rights-based instrument for expanding reproductive autonomy and advancing substantive gender equality. However, the rapid and largely unregulated growth of fertility services in Nepal raises significant legal and ethical concerns. The absence of comprehensive legislation governing ART creates vulnerabilities in areas such as clinic licensing, professional accountability, informed consent, affordability, data protection, and equitable access for marginalised groups, including LGBTIQ+ individuals, single parents, and economically vulnerable women.

This research examines regulatory gaps in the governance of ART in Nepal and explores their implications for reproductive autonomy and rights protection. It proceeds on the hypothesis that the absence of a comprehensive ART legal framework has created legal, ethical, social, and financial barriers, thereby undermining reproductive autonomy and equitable access to reproductive healthcare. Adopting a mixed-method approach that combines doctrinal legal analysis with non-doctrinal inquiry, the study analyses constitutional guarantees, statutory provisions, relevant directives, and comparative international frameworks alongside stakeholder perspectives. Key Informant Interviews (KIIs) were conducted with three fertility specialists and relevant representatives to obtain qualitative insights into affordability, legal barriers, exploitation risks, and policy gaps. In addition, a structured survey questionnaire administered between September and November 2025 among 75 medical personnel and legal professionals across Nepal employed Likert-scale and open-ended questions to assess awareness, accessibility, affordability, regulatory concerns, and inclusivity.

Respondents were predominantly young adults (18-25: 85 percent, 26-35: 13 percent), with the majority identifying as female (73 percent) and unmarried (95 percent), reflecting a demographic likely to influence future discourse on reproductive rights and ART utilisation patterns. Although the study is primarily urban-focused and limited by sample size and potential responses bias surrounding infertility, this focus corresponds with the concentration of ART services and remains relevant for understanding current patterns of accessibility in Nepal.

Conceptualising Assisted Reproductive Technologies: Medical Foundations and Emerging Legal Questions

Historically, individuals unable to conceive biological children often regarded adoption as the primary path to parenthood. However, advances in medical science over recent decades have fundamentally reshaped this understanding through the development of ART. ART encompasses a range of clinical procedures designed to achieve pregnancy through means other than sexual intercourse. Some procedures aim to restore fertility by addressing underlying physiological conditions, while others bypass such challenges entirely, enabling individuals to have biologically related children who might otherwise be unable to do so (Daar, 2013).

Among the most established and widely practised ART methods is IVF. IVF involves the fertilisation of an ovum with sperm outside the human body in a laboratory setting, after which the resulting embryo is transferred to intended mother or, in certain circumstances, to a surrogate (Kindregan & McBrien, 2012). In *J.B. v. M.B.* (2001), the

Supreme Court of New Jersey described IVF as a procedure in which a woman's ovaries are hormonally stimulated to produce multiple ova, which are subsequently retrieved and fertilised with sperm outside the body being implanted in the uterus or cryopreserved for future use. Such judicial definitions illustrate the increasing intersection between reproductive medicine and legal regulation.

Another widely utilised ART procedure is intrauterine insemination (IUI), which involves the placement of sperm directly into the female reproductive track through intervention rather than sexual intercourse (Kindregan & McBrien, 2012). This definitional clarity is particularly significant in legal discourse, as distinctions between insemination by husband, by known donor, or by an anonymous donor may directly affect determinations of legal parentage and associated rights and obligations.

Cryopreservation constitutes another key component of ART practice. It involves the controlled freezing of embryos, gametes, or reproductive tissues for long-term storage and future use (Kindregan & McBrien, 2012). The availability of cryopreserved embryos enables individuals to preserve reproductive material for later use, thereby reducing the need for repeated ovarian stimulation cycles. Additionally, this practice may lower the medical risks associated with transferring multiple embryos, including likelihood of multiple pregnancies (Trounson & Wood, 1984).

Together, these technologies have significantly transformed possibilities of family formation both globally and in Nepal. ART has expanded reproductive opportunities by providing medical alternatives to natural conception. Importantly, technological innovation in this field continues to evolve beyond procedures such as IVF, IUI, cryopreservation, and surrogacy. Recent developments include preimplantation genetic diagnosis (PGD), mitochondrial replacement therapy (MRT), and increasingly sophisticated forms of gestational surrogacy. While these advances broaden the prospects of achieving parenthood, they simultaneously generate complex ethical, legal, and social questions, rendering ART a dynamic and continually developing field of interdisciplinary inquiry.

Procreative Liberty and the Regulation of ART: International and National Context

The legality and regulation of ART are closely linked to the broader concept of procreative liberty, which encompasses the right of individuals to make autonomous decisions concerning whether and how to reproduce. Initially developed to assist infertile heterosexual married couples, ART is now increasingly accessed by single women, same-sex couples, and even fertile individuals seeking genetic parenthood outside conventional sexual reproduction. This expansion has generated complex legal and ethical questions: should the state legitimately restrict access to ART on grounds of morality, family structure, or public policy, or would such restrictions constitute an unjustifiable interference with individual autonomy, equality, and dignity?

In comparative constitutional jurisprudence, procreation liberty has been recognised as a fundamental right. In *Skinner v. Oklahoma* (1942), the United States Supreme Court characterised procreation as “fundamental to the very existence and survival of the race,” applying strict scrutiny to laws that interfered with this liberty. Later, in *Eisenstadt v. Baird* (1972), the Court expanded the right to privacy in reproductive decision-making beyond the marital context, affirming that both married and unmarried individuals possess the right to decide “whether to bear or beget a child.” These decisions underscore that reproductive rights are grounded in individual autonomy rather than derived solely from marriage or traditional family structures.

When applied to ART, the principle of procreative liberty suggests that the method of conception, whether through sexual intercourse, artificial insemination, IVF, or surrogacy, is secondary to the fundamental right itself. Denial of access to ART based on marital status, sexual orientation or conformity with a particular model of family life risks arbitrary discrimination. A rights-based framework therefore requires that eligibility for ART be assessed not by

reference to traditional marital norms, but in light of equality, non-discrimination, and the best interests of the child.

The Nepali Constitutional and Legal Context

In Nepal, the normative foundations of procreative liberty are embedded within the constitutional framework. The Constitution of Nepal (2015) guarantees reproductive rights under Article 38 and the right to health under Article 35, thereby recognising reproductive autonomy as a fundamental entitlement. However, despite these constitutional commitments, Nepal has lacked a comprehensive statutory regime governing ART. Access to fertility services has therefore been shaped less by rights-based criteria and more by socio-cultural norms, institutional discretion, and the financial capacity of individuals to afford private treatment.

The absence of explicit legal prohibition has not translated into substantive equality. Single women and LGBTIQ+ individuals continue to encounter cultural stigma and practical barriers when seeking fertility services, notwithstanding the absence of clear statutory exclusion. If marital status or heteronormative conceptions of the “ideal family” were to be adopted as implicit eligibility criteria, such practices would risk contravening constitutional guarantees of equality and non-discrimination, while deepening the social trauma associated with infertility in a context where childlessness often results in ostracism or marital instability.

Regulatory Vacuum and Emerging Responses

Nepal presently lacks a dedicated ART statute. In practice, fertility clinics have operated under general health legislation, notably the Public Health Service Act (2018) and the Public Health Service Regulations (2020), resulting in fragmented oversight and inconsistent standards. While the Right to Safe Motherhood and Reproductive Health Act (2018) gives statutory effect to constitutional reproductive rights, its scope is primarily confined to safe motherhood, abortion, and family planning, leaving ART largely unaddressed. Thus, although reproductive health is constitutionally protected, ART remains peripheral within Nepal’s legislative architecture.

The consequences of this regulatory lacuna became evident in July 2025, when the Central Investigation Bureau uncovered an illegal ova trade involving underage girls. Enforcement authorities faced prosecutorial challenges, as existing trafficking statutes did not classify ova as “organs,” and the matter was ultimately pursued under the Children’s Act (2018) rather than anti-trafficking laws (OnlineKhabar, 2025). This incident exposed significant gaps in the legal recognition and protection of gamete donors within Nepal’s existing regulatory framework.

In response, the Ministry of Health and Population issued the Infertility Management Service Operation Related Standards (2025), representing Nepal’s first structured regulatory attempt to standardise ART practice. The directive defines procedures such as IUI and IVF, mandates clinic registration under existing public health regulations, and establishes baseline standards concerning infrastructure, staffing qualifications, donor eligibility, and service charges. It further prohibits the imposition of excessive fees and seeks to mitigate commercial exploitation by subjecting clinics to formal licensing requirements.

The intersection of procreative liberty and ART regulation in Nepal reveals a critical tension between technological advancement and normative governance. Although constitutional guarantees affirm reproductive autonomy, the absence of comprehensive legislation has left significant aspects of ART practice governed by market forces and informal norms rather than by coherent rights-based standards. As ART continues to evolve, Nepal faces the pressing task of developing a regulatory framework that harmonises constitutional commitments to equality and dignity with safeguards against exploitation, ensuring that reproductive innovation advances, rather than undermines, reproductive justice.

Assisted Reproductive Technology in Nepal: Social Transformation, Structural Inequality and Regulatory Deficits

Demographic Transition and the Expanding Demand for ART

The legality and regulation of ART are increasingly linked to the broader demographic and socio-economic transitions (Inhorn & Patrizio, 2015). Improved access of women to education and career opportunities, combined with effective contraception, has contributed to progressively delayed childbearing and declining fertility rates worldwide (Balasch & Gratacós, 2012). Nepal reflects this transformation. Since the first IVF procedure was introduced at Om Hospital in 2004, ART services have expanded rapidly. At present, there are 42 registered clinics nationwide, 25 of which are located within the Kathmandu Valley alone (The Kathmandu Post, 2025). This significant increase reflects not only rising medical demand but also growing social acceptance of these technologies as legitimate pathways to parenthood.

The expansion of ART services coincides with broader transformations in family formation. Economic pressures, urbanisation, and changing lifestyle priorities have encouraged young adults to prioritise financial stability and personal development before parenthood (Mills et al., 2011). Consequently, an increasing number of individuals seek medical assistance to conceive at later reproductive age. At the same time, legal developments recognising non-marital cohabitation, same-sex relationships, and the equal status of children born outside marriage (Kindregan & McBrien, 2012) have broadened the category of potential ART users. These converging trends, demographic delay, medical advances in reproductive technology, increased social acceptance, and evolving legal frameworks have generated unprecedented demand for fertility services. ART is therefore not merely a medical phenomenon but part of a broader reconfiguration of reproduction and kinship in the twenty-first century.

Socio-cultural Pressure and Pronatalist Norms

Despite demographic modernisation, Nepal remains deeply influenced by pronatalist cultural norms embedded in religious, cultural, and familial expectations. Within Hindu traditions, the concept of *putra* (son) as essential for lineage continuity and ritual obligations creates intense pressure to reproduce, particularly to produce male offspring. In this context, infertility is transformed from a medical condition into a social crisis.

The burden of stigma falls disproportionately upon women. Regardless of medical causation, women are often blamed for reproductive failure, reflecting entrenched patriarchal assumptions that equate womanhood with motherhood. Divorce, domestic conflict, and social ostracism remain documented consequences of infertility (Inhorn & Birenbaum-Carmeli, 2008). ART therefore assumes a dual significance: it functions both as a medical intervention and as a potential pathway to social legitimacy and marital stability.

Survey findings reveal tensions within public opinion. While 52 percent support unrestricted ART access regardless of marital status or sexual orientation, 16 percent favour restricting access to married heterosexual couples. Similarly, although 72 percent support equal access rights for single women and same-sex couples, 23 percent oppose such equality. These divisions illustrate the coexistence of constitutional guarantees of equality with enduring heteronormative expectations.

Feminist Views on ART: Reproductive Freedom and Structural Control

Feminist scholars approach ART with cautious ambivalence, recognising both their potential for liberation and their capacity to reinforce existing gender hierarchies (Neyer & Bernardi, 2011). In contexts where infertility exposes women to stigma or violence, ART may provide an important source of social protection and empowerment. Access to such technologies can mitigate gender-based suffering and offer women a means of negotiating marital and familial

pressures. However, this empowerment remains constrained by structural inequalities, as access to ART reflects pronounced class-based and racial inequalities.

Although more than half of infertility cases globally involve male-factor causes, male infertility remains heavily stigmatised due to its association with impotence and emasculation. This stigma renders men comparatively invisible in ART discourse, even as women disproportionately undergo invasive procedures such as ovarian stimulation, egg retrieval, and embryo transfer. The gendered structure of ART reinforces the cultural association between womanhood and motherhood and perpetuates the misconception that infertility is primarily a woman's problem. Moreover, the medicalisation of reproduction has transformed once-optional interventions, such as prenatal diagnostics and genetic screening, into perceived obligations, intensified expectations of "responsible motherhood" and expanding surveillance over women's reproductive choices.

Survey data illustrate this tension between autonomy and control. When asked whether ART should be accessible irrespective of marital status or sexual orientation, 52 percent of respondents supported unrestricted access, while 24 percent supported access with limitations. However, 16 percent maintained that ART should be restricted to married heterosexual couples. A similar divide appears regarding legal equality: 72 percent agreed that single women, same-sex couples, and cohabiting partners should enjoy the same access as married couples, whereas 23 percent disagreed or strongly disagreed. These findings reflect a society negotiating between constitutional commitments to equality and entrenched heteronormative norms.

Professional perspectives from KIIs mirror this ambivalence. Many fertility specialists expressed legal uncertainty in serving single women and same-sex couples due to the absence of clear statutory provisions governing parental rights and the legal status of children. Some professionals argued that ART should prioritise medically infertile married couples within stable family structures, invoking cultural values and child welfare considerations.

Concerns regarding exploitation further underscore gendered implications of ART. When asked whether existing ART practices adequately protect vulnerable groups - including women, LGBTIQ+ individuals, and donors, 57.6 percent disagreed or strongly disagreed, while only 15 percent expressed confidence in current safeguards. Given that 73 percent of survey participants were women, this scepticism reflects heightened awareness of both social stigma and embodied risk. At a transnational level, feminist critiques highlight how ART contributes to reproductive commodification through surrogacy markets and reproductive tourism. While these arrangements may create economic opportunities, they also expose economically marginalised women to exploitation, giving rise to what some scholars term "reproductive trafficking." Such dynamics produce layered inequalities across gender, class, and nationality.

Thus, ART embodies a fundamental paradox. It expands reproductive opportunities for individuals historically excluded from parenthood—such as infertile women, single individuals, and same-sex couples—yet simultaneously risks reinforcing gendered burdens and global inequalities. A feminist analysis therefore calls for regulatory frameworks that genuinely enhance reproductive autonomy while addressing structural inequities, coercion, and exploitation embedded within contemporary reproductive technologies.

Kinship Transformation, Gender Dynamics, and Social Hierarchies

ARTs function as what scholars describe as "mutating technologies", generating new social practices and forms of inequality while fundamentally challenging established kinship systems (Inhorn & Birenbaum-Carmeli, 2008). These technologies fragment reproduction into genetic, gestational, and social components. Parenthood is no longer defined solely by biological continuity but may be distributed across donors, surrogates, and intended parents (Inhorn &

Birenbaum-Carmeli, 2008). In socio-cultural contexts such as Nepal—where patrilineal descent, inheritance, and ritual continuity remain socially significant—this fragmentation challenges traditional understandings of lineage and legitimacy.

Debates over donor anonymity illustrate this tension. Recipient families often favour anonymity to preserve marital harmony and shield men from infertility stigma. Conversely, emerging children's rights discourse increasingly recognises the right of donor-conceived individuals to access identifying information about biological parents for medical and psychological reasons (Biraj & Kumar, 1995). This shift raises complex legal and ethical questions concerning inheritance, identity, and family stability.

The possibility of prenatal sex selection through ART is particularly concerning in patriarchal societies characterised by son preference. Without robust safeguards, such technologies risk exacerbating gender imbalances and discriminatory practices. Similarly, debates regarding embryo status and research ethics demonstrate the difficulty of developing universally acceptable regulatory frameworks in culturally pluralistic societies (Ethics Committee of the American Society for Reproductive Medicine, 2022).

Taken together, these dynamics demonstrate that ART simultaneously destabilises and reproduces social hierarchies. While it expands reproductive possibilities and challenges rigid kinship norms, it may also entrench inequalities rooted in gender, class, caste, and heteronormative expectations. For Nepal, the challenge lies not merely in regulating medical procedures but in addressing the broader social transformations generated by reproductive technologies.

Financial barriers and state responsibility

The integration of ART into public health systems remains highly contested in Nepal, where services are delivered almost entirely through private fertility clinics concentrated in urban centres, particularly the Kathmandu Valley. Although reproductive autonomy was internationally recognised at the International Conference on Population and Development (ICPD) in Cairo in 1994, the continued privatisation of ART raises questions regarding the state's fulfilment of its public health obligations.

The average cost of a single IVF cycle ranges from three to five lakhs of Nepali rupees (World Fertility Services, 2025), placing treatment beyond the reach of many households. Survey data confirm this exclusion: 78 per cent of respondents disagreed that ART is affordable for average families, with 44.6 per cent strongly disagreeing. Geographic concentration further compounds inequality. Fifty-seven per cent agreed that the clustering of clinics in Kathmandu Valley, Pokhara, and Biratnagar makes services inaccessible to populations in other regions, while only 12 per cent disagreed.

Comparative research indicates that when fertility treatment is excluded from insurance coverage, patients paying entirely out-of-pocket often prefer multiple embryo transfers during a single IVF cycle to increase the likelihood of pregnancy. However, this practice is associated with significantly higher risks of miscarriage, preterm birth, infant mortality, and long-term disability. Scholars argue that such circumstances undermine genuine reproductive autonomy, as patients' decisions are constrained by financial pressures rather than exercised freely (Johnston, Josephine, & Gusmano, 2013).

Public opinion strongly favours state intervention: 81.7 per cent of respondents supported the inclusion of ART within national health insurance or subsidy schemes, with 38 per cent favouring full subsidisation and 43.7 per cent partial support. Collectively, these findings demonstrate that without meaningful state engagement—whether through public provision, insurance coverage, or targeted subsidies—ART risks reinforcing class-based inequalities. In its current form, access to reproductive technology in Nepal is shaped less by rights than by purchasing power.

Nepal's Legal Stance on Assisted Reproductive Technology

Nepal presently lacks a dedicated statute governing ART. In the absence of specific legislation, fertility clinics operate under the general framework of the Public Health Service Act (2018) and the Public Health Service Regulations (2020), resulting in inconsistent standards relating to pricing, consent, donor protection, and ethical oversight.

Survey data indicate widespread concern regarding this regulatory gap. 73.2 per cent of respondents believe Nepal lacks adequate legal regulation for ART, with 53.6 per cent identifying a complete absence of regulation and 19.6 per cent acknowledging limited efforts. Interviews with fertility specialists reveal persistent concerns. While the directive addresses licensing and operational standards, it does not adequately resolve complex ethical and legal questions, including disputes over frozen embryos, parental rights following divorce, and protection of egg donors from exploitation.

Collectively, the evidence indicates that although the 2025 Standards represent an important regulatory step, Nepal's legal approach to ART remains fragmented. Without comprehensive legislation addressing the ethical, social, and rights-based dimensions of assisted reproduction, constitutional guarantees of reproductive autonomy risk remaining aspirational rather than operational.

Conclusion and Policy Recommendations: Towards a Rights-Based Framework for ART Governance in Nepal

The development of ART in Nepal reveals a significant paradox. While ART has the potential to expand reproductive autonomy and address the deeply stigmatised condition of infertility, its largely unregulated expansion has generated new forms of vulnerability and inequality. The empirical findings of this study demonstrate that these challenges are systemic rather than incidental. A substantial majority of respondents (78 per cent) consider ART financially unaffordable for average Nepali families; 73.2 per cent identify the absence of adequate legal regulation; 88.9 per cent express concern regarding risks of exploitation; and 57 per cent acknowledge that the concentration of clinics in urban centres creates regional inaccessibility. Collectively, these findings reveal significant regulatory and distributive deficits that undermine constitutional guarantees of equality and reproductive rights. Although the Infertility Management Service Operation Related Standards (2025) represent an important administrative initiative establishing operational standards, licensing requirements, and donor eligibility criteria, their scope and legal authority remain limited. The directive does not adequately address key issues such as equitable access, affordability through subsidisation or insurance coverage, comprehensive protections for donors and children born through ART, determination of parental rights in non-traditional families, embryo disposition in cases of divorce or death, or the prevention of discriminatory practices such as sex selection. As reflected in KIIs, fertility specialists emphasised that Nepal is effectively practising advanced reproductive medicine within a legal framework originally designed for conventional obstetric services.

Nepal therefore stands at a critical juncture. The absence of comprehensive ART legislation is not merely a policy gap but a structural factor contributing to legal uncertainty, ethical ambiguity, and social inequality. Without structured reform, ART risks reinforcing disparities based on gender, class, geography, and sexual orientation rather than advancing reproductive justice.

The evidence strongly supports the adoption of comprehensive legislation dedicated specifically to ART governance. Such legislation should move beyond administrative directives and establish a rights-based, transparent, and enforceable regulatory framework. At a minimum, the law should provide for:

- ***Comprehensive definitions and scope:*** The legislation should provide clear and comprehensive statutory definitions of assisted reproductive technology procedures, including IVF, IUI, intracytoplasmic sperm injection

(ICSI), cryopreservation, preimplantation genetic testing, and surrogacy arrangements in order to ensure legal clarity regarding their regulation, clinical practice, and permissible use.

- ***Non-discriminatory eligibility criteria:*** Eligibility for ART services should be determined on the basis of medical need and the capacity to provide a supportive environment for a child, rather than restrictive criteria such as marital status, sexual orientation, or other discriminatory social classifications.
- ***Mandatory licensing and inspection:*** All fertility clinics, embryology laboratories, and gamete banks should be subject to mandatory licensing requirements and periodic regulatory inspections to ensure compliance with established medical, ethical, and safety standards.
- ***Robust informed consent protocols:*** Comprehensive informed consent procedures should require clinics to provide transparent disclosure of medical risks, success rates, financial costs, and potential psychological implications prior to treatment, thereby enabling patients to make fully informed reproductive decisions.
- ***Regulation of gamete and embryo donation:*** The legal framework should establish clear standards governing donor screening, permissible forms of compensation, policies on donor anonymity or identifiability, and systematic record-keeping to ensure transparency, safety, and accountability in gamete and embryo donation.
- ***Embryo disposition protocols:*** The law should regulate the storage, donation, research use, and disposal of embryos while also establishing mechanisms to resolve disputes concerning embryo ownership and decision-making in situations such as divorce, separation, or death.
- ***Prohibition of discriminatory practices:*** Regulatory provisions should prohibit discriminatory practices in ART, including sex selection for non-medical purposes, except where such procedures are necessary to prevent serious sex-linked genetic disorders.
- ***Data protection and confidentiality:*** Strong safeguards should be established to protect the confidentiality and security of sensitive reproductive, medical, and genetic information generated through ART procedures.
- ***Enforcement mechanisms:*** Effective governance should include clearly defined enforcement provisions, including regulatory oversight powers, complaint mechanisms, and proportionate penalties for non-compliance to ensure that legal standards are meaningfully implemented.

In addition to legislative reform, the establishment of an independent National ART Regulatory Authority (NARTA) is recommended to ensure effective oversight. Drawing on comparative regulatory models, such a body should include medical professionals, bioethicists, legal experts, patient advocates, and representatives of marginalised communities. Its mandate should encompass licensing and inspection, maintenance of a national ART registry, investigation of complaints, public education initiatives, and annual reporting to Parliament. Without meaningful enforcement mechanisms, including licence suspension, financial penalties, and referral of criminal violations regulation risks remaining largely symbolic.

Financial accessibility must also be addressed as a matter of public health and constitutional responsibility. ART services should be progressively integrated into the public health system, including the establishment of fertility units in major government hospitals and the expansion of national health insurance coverage to include diagnostic services and basic fertility treatments. Targeted subsidisation prioritising lower-income households and medically indicated infertility could improve equity while maintaining fiscal sustainability.

In sum, transforming ART from a predominantly private and commercially driven service into a regulated, equitable, and rights-based component of Nepal's healthcare system is both a constitutional imperative and a social necessity. Only through comprehensive legislation, institutional oversight, and financial inclusion can Nepal ensure that reproductive technologies expand reproductive autonomy rather than reproduce existing inequalities.

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Conversion Practices and the Violation of Bodily Autonomy in the LGBTQIA+ community: A Socio-Legal Study in Nepal

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Abstract

Conversion practices, which seek to alter or suppress sexual orientation, gender identity, or expression, constitute a serious violation of bodily autonomy and human rights. While global scientific and human rights consensus rejects such practices as harmful and ineffective, they persist in many contexts, including Nepal. This study adopts a mixed-methods approach, combining doctrinal legal analysis with empirical research, including questionnaires, focus group discussions, and interviews with LGBTQIA+ individuals and key stakeholders. The findings reveal a significant disjunction between Nepal's progressive constitutional framework—particularly guarantees of equality, dignity, and non-discrimination—and the absence of explicit legal prohibition of conversion practices. Despite judicial recognition of sexual and gender minority rights, these practices continue in informal, religious, and therapeutic settings, often without accountability. Empirical evidence further highlights low levels of legal awareness among affected individuals, alongside profound psychological and social harm. The study argues that conversion practices reflect broader structural inequalities rooted in social stigma, religious misconceptions, and regulatory gaps. It calls for comprehensive legal reform, including explicit prohibition, strengthened enforcement, and survivor-centred support mechanisms. Ensuring bodily autonomy in Nepal requires not only normative recognition but also effective legal and institutional safeguards to translate rights into lived realities.

Keywords: *LGBTQIA+ rights, conversion practices, bodily autonomy, rights and integrity, socio-legal analysis*

Introduction

The relationship individuals maintain with their bodies is inherently complex; especially for queer individuals, this relationship often shaped by additional layers of social regulation, normative expectations, and structural marginalization (Gender. Study, n.d.). From early childhood, many individuals who later identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual or otherwise gender and sexually diverse (LGBTQIA+) are subjected to scrutiny and corrective pressures aimed at enforcing conformity with rigid masculine or feminine norms (Marino, et al., 2023). Such surveillance frequently extends to body image, gender expression, and behavioural expectations. For transgender and non-binary individuals, experiences of gender dysphoria may further complicate embodied identity, particularly within social contexts that deny or invalidate self-identified gender (Marino, et al., 2023). Intersex persons, who are often marginalised even within LGBTQIA+ community, face distinct and profound violations of bodily autonomy, including non-consensual medical procedures during infancy or childhood (Office of High Commissioner for Human Rights [OHCHR], 2021).

At the core of these concerns lies the principle of bodily autonomy, the fundamental right of every individual to exercise control over their own body without external coercion or interference. This principle encompasses the freedom to make decisions regarding one's health, identity, sexuality, and personal boundaries. As articulated by *Natalia Kanem*,

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bodily autonomy signifies power, agency, choice, and dignity, and constitutes the foundation for gender equality and a fundamental human right (United Nations Population Fund [UNFPA], 2023). This articulation underscores that bodily autonomy is not merely a philosophical construct, but a normative cornerstone of contemporary human rights law.

International human rights standards further reinforce this position. The United Nations publication “Born Free and Equal” affirms that all individuals are entitled to free from violence, discrimination, and coerced medical interventions on the basis of sexual orientation, gender identity, or sex characteristics (UN, 2019). Despite the consolidation of such global norms, violations of bodily integrity against LGBTQIA+ individuals persist in various forms, most notably through “conversion practices”.

In the Nepali context, the legal framework presents a progressive yet incomplete picture. The Constitution of Nepal (2015) guarantees fundamental rights to equality, dignity, and non-discrimination, which extend, at least in principle to sexual and gender minorities. These protections have been significantly advanced through judicial interpretation, particularly in *Sunil Babu Pant v. Nepal Government* 2007, where the Supreme Court recognised the rights of LGBTQIA+ individuals and directed the State to ensure legal protection and non-discrimination. This landmark decision established Nepal as a comparatively progressive jurisdiction in recognising sexual and gender diversity within constitutional jurisprudence.

However, despite these normative advancements, Nepal lacks explicit legislative provisions addressing conversion practices. Existing legal mechanisms, including the National Penal Code (2017), provide only indirect remedies through general provisions on coercion, assault, and inhuman treatment, which are rarely invoked in cases involving LGBTQIA+ individuals. This absence of targeted legal prohibition creates a significant gap between constitutional guarantees and lived realities, allowing harmful practices to persist in informal, familial, religious, and therapeutic settings.

Conversion practices refer to harmful and pseudoscientific attempts to change, suppress or “correct” an individual’s sexual orientation, gender identity, or gender expression. These practices may include a wide range of methods such as psychological interventions, aversion therapy, spiritual or religious practices, social isolation, and, in extreme cases, physical abuse (Human Rights Campaign [HRC], 2021). They are grounded in the erroneous and discriminatory belief that LGBTQIA+ identities are disorders or unnatural and can be “cured”. The Conversion Practices Prohibition Legislation Act (2022) of New Zealand describes a *conversion practice* as any practice, sustained effort, or treatment directed to an individual because of their sexual orientation, gender identity, or gender expression, undertaken with the intention of changing or suppressing those characteristics. This statutory articulation reflects a growing international recognition that such practices constitute serious infringements of autonomy, dignity, and equality.

Conversion practices fundamentally violate bodily autonomy by subjecting individuals to coercion, manipulation, and non-consensual interventions. They inflict significant psychological, emotional, and, at times, physical harm, while undermining the right to self-determination and respect for personal identity. Nevertheless, despite increasing global recognition and legislative action, these practices remain insufficiently addressed in many contexts, including Nepal. Societal stigma, entrenched heteronormativity, and limited legal awareness continue to obscure the gravity of these violations, thereby perpetuating silence and impunity.

This article situates conversion practices within the broader framework of bodily autonomy and human rights, examining their legal, social, and ethical dimensions within both international and Nepali contexts. It highlights the disjunction between formal legal recognition and lived experiences, and, by integrating doctrinal analysis with empirical evidence, offers a nuanced understanding of how bodily autonomy is contested within the LGBTQIA+

community. To this end, the study adopts a mixed-methods approach, combining doctrinal and non-doctrinal research techniques.

The doctrinal component involves a systematic analysis of politico-legal documents, including international human rights instruments, national legislation, policy frameworks, and case law from multiple jurisdictions. This facilitates an assessment of the extent to which existing legal standards address—or fail to address—conversion practices. In parallel, the non-doctrinal component employs qualitative methods, including focus group discussions, structured questionnaires, and in-depth interviews with LGBTQIA+ individuals, activists, and professionals. Additional insights are drawn from healthcare settings, religious institutions, and human rights organisations.

By combining legal analysis with empirical inquiry, this methodology provides a comprehensive and contextually grounded understanding of conversion practices, capturing both the normative legal framework and the lived realities of individuals whose bodily autonomy is directly affected.

Conversion Practices: History, Harm and Human Rights

Historical Origins

Conversion practice emerged in the nineteenth century within a medio-legal context in which same-sex sexual activity between consenting adults was considered a crime and homosexuality was predominantly viewed as a pathology or mental illness (American Psychological Association [APA], 2010). Early psychiatric discourse conceptualised homosexuality as a form of development disorder or as the result of biological and environmental defects, including presumed genetic abnormalities, parental hormone influences, adverse childhood experiences (Blakemore, 2018). On this assumption, psychiatrists and clinicians developed treatments aimed at “correcting” or “repairing” homosexuality.

Such treatments included psychodynamic approaches focused on restructuring family relationships, aversion therapies, such as electric shock treatment and chemically induced nausea; behavioural techniques, including enforced heterosexual interactions such as dating practices, assertiveness training, and demonstrations of affection toward the opposite sex; and cognitive methods designed to reframe same-sex thoughts and desires. These approaches were grounded in flawed scientific assumptions and reflected prevailing social prejudices rather than empirical evidence.

Scientific Reassessment

Empirical research conducted during the mid-twentieth century fundamentally challenged the pathological model of homosexuality. Studies of human sexual demonstrate that same-sex attraction constitutes a normal variation within humane sexuality. Following comprehensive reviews of the scientific evidence in the early 1970s, the American Psychological Association and the American Psychiatric Association concluded that homosexuality was not a psychological disorder, and removed from the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders in 1973 (Drescher, 2015), a decision subsequently supported by the APA (APA, 2010).

International consensus followed. In 1992, the World Health Organization (WHO) removed homosexuality from the 10th edition of the International Classification of Diseases (ICD-10), although the category of “ego-dystonic sexual orientation” remained, reflecting residual pathologizing perspectives. These institutional shifts marked a decisive rejection of pathologisation within mainstream psychiatry and psychology practice. Consequently, conversion therapy was gradually displaced from established mental health practice.

Despite this shift, some mental health professionals continued to provide a form of conversion therapy, referred to as “reparative therapy,” and advocacy organizations such as the National Association of Research and Therapy of Homosexuality (NARTH) were established in the United States of America (Karin & Julian, 2021).

Religious Institutionalisation

From the 1970s onwards, some faith-based organizations created parallel mechanisms to address homosexuality outside formal medical settings “Ex-gay” ministries emerged, offering spiritual healing through a process of repentance, prayers, and forgiveness (Jones et al., 2018). In certain evangelical and Pentecostal contexts, such practices included deliverance rituals aimed at “curing” homosexuality, at times associating it as sin, moral failure, or even witchcraft, particularly in parts of Africa, including Nigeria and Uganda (Parliament of Canada, n.d.).

In some Islamic and Christian contexts, religious leaders have endorsed counselling or ritual practices intended to suppress same-sex attraction. While differing in theological rationale, these approaches share a common premise: that non-heteronormative identities are deviant and require correction.

International Human Rights Framework and Emerging Prohibitions

Although bodily autonomy is not always explicitly articulated in legal instruments, it underpins a range of internationally recognised rights, including the right to security of the person and the prohibition of torture and cruel, inhuman, or degrading treatment. In 2015, twelve United Nations entities issued a joint statement calling on States to eliminate violence and discrimination against LGBTQIA+ individuals, including harmful practices aimed at changing sexual orientation or gender identity (UN, 2015).

Key international instruments reinforce these protections. The Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) safeguard dignity, personal security, and freedom from inhuman treatment. The Convention on the Rights of the Child (1989) obliges States to protect children from harmful practices. Regional frameworks, including the European Convention on Human Rights (1950), further protect the right to private life and bodily integrity.

Jurisprudential developments further reinforce these norms. In *T.H. v. Czech Republic (2025)*, the European Court of Human Rights ruled that a forced sterilisation requirement breached Article 8 of the European Convention on Human Rights, affirming the centrality of bodily integrity to the right to private life. In April 2025 Brazil’s Federal Council of Medicine (CFM) adopted a resolution banning gender-affirming medical care for minors under 18, including hormone therapy and puberty blockers, an example of regulatory retrenchment affecting bodily autonomy. Conversely, Cuba is preparing to implement a new law, effective by mid-2026, allowing simplified changes to gender identity in legal documents, widely regarded as a significant step for Cuba’s LGBTQ+ community and their bodily autonomy (Lisandra et.al. 2025).

A growing number of States have enacted explicit prohibitions on conversion practices. Countries such as Malta, New Zealand, Canada, Germany, Iceland, Norway, and Spain have introduced legislative bans of varying scope. Nevertheless, the absence of comprehensive legal protections in most jurisdictions leaves many individuals vulnerable to coercive interventions.

Malta	Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (2016)	First European country to fully outlaw conversion therapy in all settings.
New Zealand	Conversion Practices Prohibition Legislation Act 2022	Bans all conversion practices for minors and persons lacking decision-making capacity; bans practices causing serious harm regardless of age.
Canada	Bill C-4 (Criminal Code amendment, 2021)	Prohibits causing a person to undergo conversion therapy, advertising, profiting from it, removing minors from Canada for the purpose of undergoing such practices.
Germany	Law on Protection against Conversion Treatments (2020)	Prohibits conversion therapy for minors and adults where coercion or deception is involved.
Iceland	Penal Code (amendment June 2023)	Bans conversion therapy for both children and adults.
Norway	Act 113 (Criminal Code amendment)	Nationwide ban on all forms of conversion therapy.
Spain	Law 4/2023 (Trans Law)	Bans all conversion practices irrespective of purported consent.

Corrective Violence and the Limits of Legal Reform

The case of Eudy Simelane illustrates the extreme consequences of conversion ideology when expressed through violence. A prominent lesbian soccer player and LGBTQIA+ activist in South Africa, Simelane was attacked, robbed, gang-raped and murdered on 28 April 2008 (South African History Online, 2019). The crime was widely recognised as a hate-motivated act linked to her sexual orientation. This case highlights the horrific practice of “corrective rape”, whereby perpetrators claim to “punish” or “change” sexual orientation through sexual violence. This case is emblematic of the dangers faced by queer individuals in society at large, where their bodily autonomy and safety are gravely threatened due to prejudice and hate (South African History Online, 2025). It is estimated that approximately 500 lesbians experience corrective rape annually in South Africa (South African History Online, 2025), with significant underreporting due to stigma and fear.

This phenomenon demonstrates how deeply entrenched prejudice can manifest in severe violations of bodily autonomy and personal security. It also underscores the limitations of legal reform in the absence of broader social transformation, effective enforcement, and sustained public education.

Legal Context of Conversion Practices in Nepal

While international human rights standards increasingly recognise conversion practices as violations of bodily autonomy, the domestic legal framework in Nepal presents a more complex and incomplete picture. The Constitution of Nepal 2015 provides a strong normative foundation by guaranteeing the right to equality (Article 18), dignity (Article 16), and freedom from discrimination. These constitutional protections have been further protected through judicial interpretation, particularly in *Sunil Babu Pant v. Nepal Government* (2007), where the Supreme Court recognised sexual and gender minorities as rights-bearing individuals entitled to protection under the Constitution. Collectively, these developments affirm the principles of bodily autonomy, non-discrimination, and personal identity.

However, despite this progressive constitutional and jurisprudential framework, Nepal lacks explicit legislation

prohibiting conversion practices. The Constitution does not explicitly recognise bodily autonomy; although the Article 18 (Right to Equality) guarantees non-discrimination, thereby supporting principles of dignity and self-determination. Similarly, there is no statutory definition of such practices, nor are there specific criminal or civil remedies addressing attempts to change or suppress an individual's sexual orientation, gender identity, or expression. In the absence of targeted legal provisions, harmful practices are often subsumed under general offences, such as assault, coercion, or inhuman treatment under the National Penal Code (2017). In practice, however, these provisions are rarely invoked in cases involving LGBTQIA+ individuals, resulting in limited accountability and widespread underreporting.

Regulatory gaps further exacerbate the issue. Conversion practices frequently occur within informal or weakly regulated spaces, including religious institutions, family settings, and certain healthcare environments (International Alert, 2023). Although professional ethical standards discourage harmful or non-consensual interventions, Nepal lacks binding national guidelines explicitly prohibiting conversion therapy. This allows such practices to persist under the guise of counselling, spiritual healing, or moral correction, thereby evading formal scrutiny.

From an international legal perspective, Nepal is a State Party to key human rights treaties, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, which obligate the State to prevent discrimination and protect individuals from cruel, inhuman, or degrading treatment. Conversion practices, particularly when coercive, arguably fall within the scope of these prohibitions. Nevertheless, the limited domestication and enforcement of these obligations constrain their practical impact.

This legal landscape reveals a clear disjunction between constitutional guarantees and lived realities. While Nepal's legal framework formally recognises equality and dignity, the absence of explicit prohibition, weak regulatory oversight, and low levels of legal awareness allow conversion practices to persist. As reflected in the empirical findings of this study, this gap not only undermines the realisation of bodily autonomy but also reinforces structural vulnerabilities within the LGBTQIA+ community.

Lived Realities and Legal Gaps: A Socio-Legal Analysis of Conversion Practices and Bodily Autonomy in Nepal

While doctrinal analysis outlines the historical evolution, normative frameworks, and legislative responses to conversion practices, it cannot fully capture the lived realities of those affected. Many individuals possess direct experience of such practices yet remain unaware that these harms constitute violations of fundamental rights. Accordingly, this section presents empirical findings derived from qualitative inquiry, highlighting ground-level experiences, awareness gaps, religious influences, and structural barriers within existing legal systems.

To complement the doctrinal analysis, this study adopts a non-doctrinal approach grounded in qualitative and limited quantitative methods. Data were collected through questionnaires, in-depth "soft-hour" conversations, structured interviews, and focus group discussions (FGDs) with LGBTQIA+ individuals, activists, experts, and allies. The objective was to examine the persistence of conversion practices within Nepali society, their socio-cultural dimensions, regulatory gaps, and the limited public understanding of bodily autonomy. This approach enables the study to move beyond normative frameworks and engage with lived experiences.

Questionnaire Survey

The survey instrument assessed awareness of conversion practices, personal experiences, understanding of bodily

autonomy, and knowledge of the legal framework in Nepal. It was administered to twenty LGBTQIA+ individuals across the country. Respondents included gender rights activists, community workers, individuals with lived experience of conversion practices, and legal practitioners. Participants represented diverse gender identities, including transgender, intersex, and cisgender persons and ranged in age from 18 to 64 years.

The questionnaire combined multiple-choice questions with open-ended responses to ensure clarity while enabling participants to articulate their perceptions and experiences.

Key Findings

The findings varying level of awareness among respondents regarding conversion practices. While many participants had direct or indirect experience of conversion practices, a significant proportion did not recognise these experiences as violations of bodily autonomy. Knowledge of the legal position in Nepal was similarly limited.

More than half of the respondents reported having experienced some forms of conversion practice, including psychological counseling aimed at changing sexual orientation or gender identity, religious interventions, and behavioral modification techniques. Although more extreme methods, such as electroconvulsive therapy were less commonly reported as personally experiences, respondents acknowledged their existence within the broader social contexts.

Participants overwhelmingly regarded conversion practices as ineffective. Most rated their effectiveness at the lowest levels on a five-point scale, rejecting the notion that such interventions can “cure” or “correct” sexual orientation or gender identity. Despite this recognition, awareness of bodily autonomy as a legal and human rights principle remained limited.

A majority of respondents lacked knowledge of the legal framework governing conversion practices in Nepal. However, most expressed support for explicit legal prohibition. This divergence between normative attitudes and legal awareness highlights a critical information gap.

Overall, the findings indicate that while conversion practices are widely experienced and recognised as harmful, there is limited awareness of their legal and human rights implications. This underscores the need for enhanced legal literacy, public awareness initiatives, and clearer regulatory mechanisms.

Focus Group Discussions (FDGs)

Three phases of FDGs were conducted with LGBTQIA+ individuals and activists to explore their experiences and opinions regarding the conversion practices. Each group comprised six participants from diverse geographical, religious and socio-cultural backgrounds, and gender identities. Each session lasted approximately one hour, with informed consent obtained and confidentiality strictly maintained. The discussions were designed not only to collect information and experiential data but also to facilitate reflection among participants regarding bodily autonomy and rights violations.

Key Findings

Knowledge and experience: Participants shared both direct and indirect experiences of being compelled to undergo religious rites, psychological counseling, and behavior interventions aimed at suppressing or altering their gender identity or sexual orientation. Some described being exposed to more severe interventions, such as forced rehabilitation, hormone-related treatments, and electroconvulsive therapy as well as instances of physical abuse and coercion.

Physical, emotional and psychological impact: Participants expressed profound psychological consequences, including confusion, diminished self-esteem, trauma, and recurrent suicidal ideation. Instances of self-harm were reported. Those subjected to physical interventions reported adverse physical health outcomes in addition to emotional distress. These cumulative impacts reflect serious violations of both mental and bodily integrity.

Awareness of bodily autonomy: Participants generally agreed that conversion practices violated their rights and bodily autonomy. However, only a few had previously understood these experiences in legal or rights-based terms. As one participant reflected: “I didn’t know about the rights I have. I was just living with the thought that these conversion practices were normal and acceptable.” The discussions themselves facilitated greater awareness, reinforcing the principle of self-determination over one’s body, identity, and expression.

Recommendations for legal or regulatory reformation: Participants unanimously called for explicit legal prohibition, supported by enforceable regulatory mechanisms. While acknowledging the influence of socio-religious factors, they emphasised the urgent need for legal intervention. Public awareness initiatives were also identified as essential, particularly to improve understanding of bodily autonomy and rights. The FGDs highlight a clear gap between formal legal protections and lived realities, underscoring the need for legislative reform, accessible support services, and sustained public education.

Interviews and Soft-hour Conversation

To complement survey and group data, in-depth interviews were conducted with three key stakeholders: a gender rights activist, a legal professional, and a mental health counsellor.

The gender rights activist highlighted pervasive social exclusion and noted that some individuals engage in conversion practices in an attempt to conform to heteronormative expectations. The activist emphasised that basic needs—such as housing, employment, and safety—often take precedence over bodily autonomy within marginalised communities, and observed that legal prohibition alone is insufficient without broader societal change.

The legal professional identified systemic challenges, including limited LGBTQIA+ representation within political institutions and weak domestic implementation of international human rights standards. The respondent emphasised the importance of strategic litigation, legal reform, and awareness-raising to address conversion practices effectively.

The mental health counsellor underscored the long-term psychological consequences of conversion practices, including anxiety, depression, gender dysphoria, and suicidal behaviour. Many clients seeking support had experienced forced religious or psychological interventions, often initiated by family members. The counsellor also noted instances of inappropriate medicalisation, where treatment addressed symptoms rather than underlying harm. The need for integrated, LGBTQIA+-affirming mental health and legal support systems was strongly emphasised.

The empirical evidence demonstrates that conversion practices remain a lived reality within Nepali society. While participants widely recognise their harm and ineffectiveness, there is a significant deficit in legal awareness and rights consciousness. Structural barriers—including stigma, religious conservatism, limited institutional representation, and weak enforcement—continue to perpetuate these practices.

Collectively, the findings reveal a substantial gap between formal legal protections and lived experiences. Addressing this gap requires not only explicit legal prohibition but also comprehensive public education, accessible mental health services, strategic litigation, and sustained advocacy to safeguard bodily autonomy and dignity within the LGBTQIA+ community.

Towards Legal Prohibition and Social Transformation

The analysis undertaken in this study demonstrates that conversion practices in Nepal persist within a legal and social environment characterised by normative recognition but regulatory absence. While the Constitution of Nepal 2015 guarantees equality, dignity, and non-discrimination, and judicial precedents such as *Sunil Babu Pant v. Nepal Government 2007* affirm the rights of sexual and gender minorities, these protections remain largely aspirational in the absence of explicit statutory prohibition. The lack of a clear legal framework addressing conversion practices allows such harmful interventions to continue in informal and unregulated settings, often under the guise of religious, familial, or therapeutic correction.

Empirical findings reinforce this legal gap, revealing that conversion practices are not only prevalent but also insufficiently recognised as violations of bodily autonomy. Many individuals lack awareness of their constitutional rights and the limited legal remedies available under existing laws, such as the National Penal Code 2017 Nepal. These disconnect between formal legal guarantees and lived realities underscores a broader socio-legal deficit, where rights exist in principle but remain inaccessible in practice.

Furthermore, Nepal's obligations under international human rights instruments, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, require the State to protect individuals from cruel, inhuman, or degrading treatment and discrimination. Conversion practices, particularly when coercive, fall squarely within these prohibitions. However, the limited domestication and enforcement of these obligations weaken their practical impact.

Accordingly, addressing conversion practices in Nepal requires both legal reform and broader socio-cultural transformation. The following recommendations are proposed:

- **Enactment of Specific Legislation:** Adopt a comprehensive legislation explicitly prohibiting conversion practices. Such a law should clearly define prohibited conduct, criminalise coercive interventions, and provide civil remedies for survivors. It should also establish enforcement mechanisms, including complaint procedures and victim protection measures, drawing on comparative models while ensuring contextual relevance. Comparative models, including New Zealand's *Conversion Practices Prohibition Legislation Act 2022*, may offer useful guidance, subject to contextual adaptation.
- **Strengthening Legal Enforcement and Accountability:** Existing legal provisions under the National Penal Code 2017 should be more effectively utilised to address coercion, abuse, and inhuman treatment. Law enforcement agencies, prosecutors, and the judiciary require targeted training to recognise conversion practices as rights violations and to respond appropriately.
- **Regulatory Oversight of Institutions:** Clear regulatory guidelines should be developed for healthcare providers, counselling services, and religious institutions to prohibit any form of conversion practice. Professional regulatory bodies should adopt binding ethical standards and disciplinary mechanisms to ensure accountability.
- **Enhancing Legal Awareness and Rights Literacy:** Public awareness initiatives are essential to bridge the gap between legal rights and lived experience. Targeted programmes should focus on informing LGBTQIA+ individuals of their rights to bodily autonomy and available remedies, while also addressing societal misconceptions surrounding sexual orientation and gender identity.
- **Inclusive Policy Representation:** The meaningful inclusion of LGBTQIA+ individuals within legislative, policy-making, and regulatory bodies should be institutionalised. Such inclusion would enhance responsiveness to community-specific concerns and strengthen accountability.
- **Integrated Support Systems:** Survivor-centred support mechanisms must be strengthened through the integration

of legal aid, psychosocial services, and community-based support. Trauma-informed and LGBTQIA+-affirming mental health services should be expanded to address the long-term impacts of conversion practices.

In conclusion, while Nepal's constitutional and jurisprudential framework provides a progressive foundation for the protection of sexual and gender minorities, the absence of explicit legal prohibition and effective enforcement mechanisms allows conversion practices to persist. Bridging this gap requires a coordinated approach that combines legislative reform, institutional accountability, and sustained social transformation. Only through such measures can bodily autonomy be realised not merely as a constitutional promise, but as a lived and enforceable right for all individuals.

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Behind Bars, Beyond Rights: Systematic Denial of Sexual and Reproductive Health Rights among Female Prisoners in Nepal

Shrija Poudel*

Abstract

Women and girls constitute approximately 7 per cent of the global prison population, yet their rate of incarceration is increasing more rapidly than that of men. In Nepal, female prisoners face a systematic denial of sexual and reproductive health rights (SRHR), despite constitutional guarantees under Article 35 of the Constitution of Nepal (2015) and statutory protections in the Prison Act (2022) and the Safe Motherhood and Reproductive Health Rights Act (2018). This study examines the extent to which these legal commitments are realised in practice by assessing access to healthcare, reproductive health services, and institutional capacity within correctional facilities. Employing a quantitative methodology, supplemented by comparative analysis against international standards, the research evaluates overcrowding, availability of SRHR services, and resource allocation. The findings reveal a significant gap between legal guarantees and lived realities, exacerbated by the absence of a dedicated SRHR budget and reliance on non-governmental organisations for service provision. The study concludes that, without adequate funding, trained personnel, and gender-responsive implementation mechanisms, constitutional protections remain largely symbolic. It proposes targeted policy reforms to strengthen institutional accountability and ensure the effective realisation of SRHR for incarcerated women in Nepal.

Keywords: *Sexual and reproductive health rights, reproductive justice, human rights-based approach, gender-responsive criminology, menstrual hygiene management*

Introduction

The global rise in female incarceration has become an increasingly significant concern, with the number of women and girls in prison growing at a rate that often surpasses that of their male counterparts, despite their continued minority within the overall prison population (Penal Reform International, 2021). A substantial proportion of women within the carceral system originate from socially and economically disadvantaged backgrounds and have histories of trauma, including domestic violence and sexual abuse (Green et al., 2016). Prison systems, historically designed to accommodate predominantly male populations, often fail adequately to address the distinct health, hygiene, and psychological needs of female inmates (Hidayati et al., 2023).

The international human rights community has recognised these disparities through instruments such as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010), which promote substantive gender equality and mandate access to healthcare and sanitary facilities (Zakir, Khan & Feroz, 2020). However, women in detention continue to experience serious human rights violations, including inadequate antenatal and postnatal care, poor nutrition, and, in certain jurisdictions, the use of restraints during pregnancy and labour (Baldwin & Epstein, 2017). Postnatal neglect and the forced separation of mothers from infants adversely affect both maternal and child wellbeing (WHO, 2021). Furthermore, limited access

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to contraception, gynaecological services, and cancer screening increases the risk of unintended pregnancies, sexually transmitted infections (STIs), and untreated diseases, thereby exposing significant gaps within the prison healthcare system (Kelsey et al., 2017).

Although female prisoners typically account for less than 7 percent of the global prison population, their numbers are rising at a disproportionate rate that often outpaces that of male prisoners (Prison Studies Brief, 2025). In Nepal, women represented approximately 5.4 percent of the total prison population at the end of 2025, with a consistent upward trend in recent years (Prison Studies Brief, 2025). This increase is not necessarily correlated with a rise in violent crime; rather, it is frequently associated with stricter sentencing practices for non-violent offences, particularly drug-related charges, which disproportionately affect women (Swavola et al., 2016).

This study adopts a descriptive and explanatory mixed-methods design. Quantitative data were gathered to assess prison capacity, overcrowding ratios, and the availability of SRHR-related resources. Qualitative interviews with prison administrators provided insight into institutional barriers and practical challenges in implementing the Prison Act (2022) and related policies. The study covered eight prison facilities across all seven provinces, combining primary field data from Kaski, Ilam, Makwanpur, and Parbat with secondary data derived from official reports of Central Jail, Siraha, Salyan, and Kanchanpur. A purposive sampling technique ensured representation of both central and district-level prisons, enabling comparative analysis of structural and institutional disparities. Data were analysed using descriptive statistical techniques and thematic analysis. Visual representations, including bar and pie charts, were employed to illustrate resource gaps and rights violations.

Ethical principles were strictly observed throughout the research process. Participation by prison officials was voluntary, confidentiality was maintained, and formal permissions were obtained from the respective prison administrations. The study focuses on systemic and policy-level implementation rather than individual inmate medical records, thereby ensuring both methodological rigor and ethical sensitivity.

Theoretical and Global Perspectives on Sexual and Reproductive Health Rights in Prisons

A growing body of international scholarship demonstrates that the denial of SRHR and related services in custodial settings is widespread. Empirical studies from both developed and developing contexts, ranging from the United States to South Asia and Sub-Saharan Africa illustrate the deprivation of menstrual hygiene products, inadequate antenatal and postnatal care, limited access to contraception, insufficient pain management, inadequate nutrition support during pregnancy, and the use of restraints during childbirth (Snyder, 2022). Such practices cause humiliation, psychological distress, and lasting health consequences (Sawyer, 2019), contravening medical ethics and violating international human rights standards, particularly the Bangkok Rules. The phenomenon commonly described as “period poverty” in prisons underscores how even basic menstrual health is often treated as discretionary rather than as a routine healthcare necessity.

To understand and interpret such structural neglect, scholars have advanced three principal frameworks: the Human Rights-Based Approach (HRBA), the Reproductive Justice (RJ) framework, and Gender-Responsive Criminology (GRC). Collectively, these frameworks provide an integrated normative and theoretical foundation for analysing SRHR violations in custodial settings and for informing reform-oriented policy interventions.

Human Rights-Based Approach (HRBA)

The Human Rights-Based Approach asserts that health is a fundamental, non-derogable right that must be respected, protected, and fulfilled, even within carceral institutions (UNSDG, 2015). Grounded in the principles of universality,

accountability, participation, and non-discrimination, HRBA requires states to ensure that healthcare services meet the “AAAQ” standards of availability, accessibility, acceptability, and quality (John, 2021). Within this framework, the denial of prenatal care, the absence of female medical staff, or the shackling of pregnant women during labour constitutes a direct violation of the right to health and, in certain circumstances, prohibition of cruel, inhuman, or degrading treatment. HRBA therefore reframes deficiencies in prison healthcare not as administrative shortcomings but as breaches of binding state obligations.

Reproductive Justice (RJ)

The Reproductive Justice framework expands the discourse beyond access to abortion or contraception by situating reproductive rights within broader structures of social inequality. It interrogates *why* women, particularly women of colour, economically marginalised women, and survivors of violence are disproportionately criminalised and incarcerated (Hutchinson-Colas et al., 2022). It links reproductive deprivation in prisons to systemic issues such as the criminalisation of poverty, racial bias, and state control over marginalised bodies (Social and Reproductive Justice Hub, n.d.).

From this perspective, the forced separation of incarcerated mothers from their infants, the absence of prison nursery programmes, and the lack of child-friendly facilities represent forms of reproductive injustice. Historically and contemporaneously, women in detention or under state supervision have been subjected to coercive reproductive practices, including forced sterilisation (Salisbury & Crawford, 2025). RJ framework highlights this continuing control over women’s bodies and emphasises bodily autonomy as central to dignity and equality (Hayes & Gomez, 2022). For incarcerated women, the right to parent in safe and healthy environments is severely constrained (Covington, 2001). Many are separated from their children, risk losing custody, and encounter significant obstacles in maintaining family bonds, even when they are the primary caregivers (Covington, 2001). Accordingly, RJ advocates institutional reforms such as a prison-based nurseries, child-friendly visiting spaces, family reunification programmes, and community-based alternatives to incarceration for primary caregivers (Children of Incarcerated Caregivers, 2024; Justice and Support Programmes, 2025).

Gender-Responsive Criminology (GRC)

Gender-Responsive Criminology translates rights-based and justice-oriented principles into correctional policy and practice (National Institute of Corrections, 2003). It recognises that women’s pathways into the criminal justice system are frequently shaped by prior trauma, poverty, substance dependency, and coercive relationships. Accordingly, GRC advocates trauma-informed, gender-sensitive, and rehabilitative correctional approaches. These include the appointment of female medical staff, the provision of private and respectful reproductive healthcare, the integration of mental and reproductive health services, and the adoption of non-custodial measures where appropriate. Rather than prioritising punitive control, GRC reorients correctional systems towards dignity, rehabilitation, and substantive dignity. Collectively, these theoretical foundations demonstrate that the denial of SRHR to incarcerated women is not merely a failure of service delivery but a manifestation of entrenched gendered power structures within penal institutions. Structural neglect within prisons reflects broader patterns of marginalisation and social control. When situated within the Nepali context, these insights acquire particular urgency. Despite progressive constitutional guarantees under Article 35 of the Constitution of Nepal (2015) and statutory reforms introduced through the Prison Act (2022), significant gaps persist between normative commitments and institutional realities. The subsequent analysis in this article draws upon HRBA, RJ, and GRC frameworks to assess whether Nepal’s correctional system meaningfully fulfills its obligations to ensure basic sexual and reproductive health rights of women in detention.

International and Regional Frameworks on Sexual and Reproductive Health and Rights in Prisons

At the global level, several international treaties and normative instruments establish a comprehensive legal and moral framework for safeguarding the rights of women in detention (Parajuli, 2020). The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) collectively articulate the principles of dignity, equality, and non-discrimination that underpin SRHR. More specifically, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders known as the Bangkok Rules provide a gender-responsive framework focused to the needs of women in custodial settings. These frameworks recognise that gender-sensitive care is not an act of leniency but an essential condition of justice (UNODC, 2015). The Bangkok Rules, in particular, affirm that the provision of sanitary materials, as well as prenatal and postnatal care, is integral to achieving substantive gender equality.

Complementing these standards, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015) establish that prisoners are entitled to a standard of healthcare equivalent to that available in the community. Rules 24 and 27 require access to necessary medical services without discrimination and mandate that medical personnel protect prisoners' physical and mental health, including their reproductive well-being. Rule 18 further requires adequate provision for personal hygiene, reinforcing the obligation to ensure access to menstrual health supplies. Collectively, these rules operationalise the HRBA principle of universality, affirming that incarceration does not extinguish fundamental human rights.

Regional experiences demonstrate the persistent gap between normative commitments and implementation. Across South Asia, studies from India, Bangladesh, and Sri Lanka reveal recurring patterns of gendered neglect within prison systems. In India, despite progressive provisions under the Model Prison Manual (2016) (Ministry of Women and Child Development, 2018), and judicial recognition of reproductive autonomy, including access to abortion and conjugal visits as elements of human dignity, implementation remains uneven (Centre for Reproductive Rights, 2020). Bangladesh and Sri Lanka, constrained by outdated legal frameworks and chronic overcrowding, face similar challenges, including shortages of female medical staff (Penal Reform International, 2013), limited access to sanitary supplies, and inadequate prenatal care (U.S. Department of State, 2020).

Conversely, comparative examples from Norway, Canada, and Australia offer valuable lessons. Norway's prison reforms highlight that even advanced penal systems may overlook gender-specific needs when institutional designs remain predominantly male-centric (Norwegian Parliamentary Ombudsman, 2017). Canada's trauma-informed and women-centred correctional approach integrate SRHR within broader rehabilitation policies (Women's Corrections, 2019), while Australia's Justice Health system recognises reproductive healthcare as a community-equivalent service (Kilroy, 2016). Nevertheless, structural barriers, particularly funding limitations and entrenched institutional attitudes, continue to impede full realisation of these standards.

These global and regional experiences illustrate a common challenge: translating normative human rights standards into effective institutional practice. The central issue is not the absence of legal frameworks but the failure to operationalise them through adequate resource allocation, gender-sensitive policies, and sustained accountability mechanisms.

Bridging Theory and Practice: Sexual and Reproductive Health Rights in Nepali Prisons

Nepal's Framework on Sexual and Reproductive Health Right in Prisons

Nepal's legal trajectory reflects both progress and paradox. The Constitution of Nepal (2015) enshrines reproductive health as a fundamental right under Article 38(2), establishing a constitutional foundation for safe motherhood and access to healthcare for all women, including those in detention. The Safe Motherhood and Reproductive Health Rights Act (2018) (SMRHRA) further operationalises this guarantee by mandating free reproductive health services and legalising abortion under defined conditions, aligning closely with international commitments under CEDAW and ICESCR. The Prisons Act (2022) marks a significant legislative reform by introducing gender-sensitive provisions, including special accommodations for pregnant and breastfeeding inmates and parole options for childbirth.

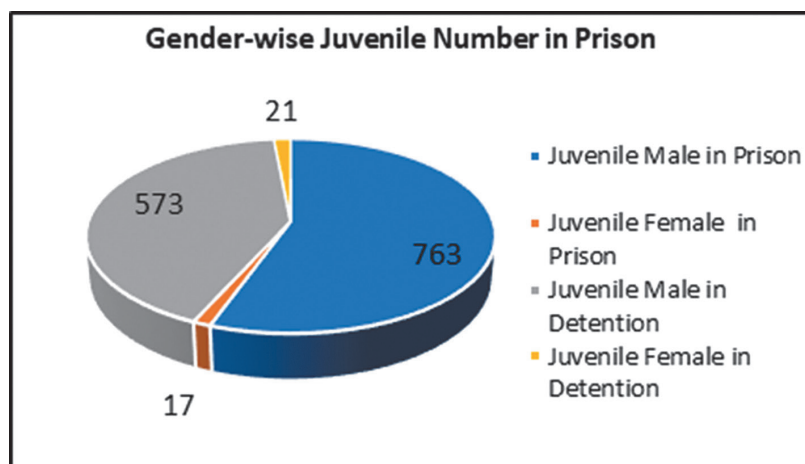
Despite these advancements, the practical realisation of SRHR within Nepal's prisons remains limited. Chronic overcrowding, often exceeding 180 percent of official capacity, combined with a shortage of trained female health personnel and insufficient infrastructure renders these rights largely theoretical. Case studies such as that of *Lakshmi Devi Dhikta* (2009), who was denied a legal abortion due to an inability to pay a minimal fee, and *Renu Shrestha* (2017), whose miscarriage was criminalised, illustrate how poverty, stigma, and systemic neglect transform legally guaranteed rights into lived denials. Nepal's ratification of key international treaties and its formal commitment to the Bangkok Rules and the Nelson Mandela Rules, reinforces its legal obligations. Yet, practical enforcement remains limited, highlighting the persistent gap between legal provisions and institutional practice. Viewed through the human rights and feminist frameworks, and considered alongside global normative standards, it becomes evident that the denial of SRHR in prisons is not a result of legislative absence but of systemic institutional failure. Nepal, like many states, face a tension between progressive legal texts and regressive practice. Bridging this divide requires transforming human rights rhetoric into operational, gender-responsive prison reforms that preserve dignity, autonomy, and health for incarcerated women.

Gender Composition of the Prison Population

Out of a total prison population of 28,718, males constitute 94.6 percent, while women account for only 5.4 percent. Among convicted individuals, 60.3 percent are male and 3.3 percent are female, whereas male detainees comprise 34.3 percent of the population and female detainees 2.1 percent. This stark gender disparity contributes to the systemic deprioritisation of female-specific infrastructure and services, including SRHR. The male-centric design of prisons renders the reproductive and psychological needs of female inmates largely invisible, creating a structural foundation for the SRHR deficiencies documented below.

Juvenile in Correctional Institutions

The juvenile population in correctional institutions is overwhelmingly male. Of the 1,374 children held in correctional institutions, 1,336 (97.2 percent) are male, while only 38 (2.8 percent) are female. This disproportion reflects broader gendered patterns in offending and sentencing, with male juveniles constituting the vast majority of young offenders requiring correctional services.



Capacity, Occupancy Rate and Overcrowding in Selected Prison				
Prison Correctional Centre	Prison Capacity	Actual Inmates	Occupancy Rate (%)	Overcrowding (%)
Pokhara (Kaski)	200	539	269.5%	+169.5%
Ilam	150	331	220.7%	+120.7%
Palpa	100	233	233.0%	+133.0%
Siraha	150	442	294.7%	+194.7%
Salyan	40	131	327.5%	+227.5%
Kanchanpur	170	475	279.4%	+179.4%
Jagannath Jail	1,400	3,880	277.1%	+177.1%
Average	–	–	271.7%	+171.7%

Capacity, Occupancy Rate and Overcrowding in Selected Prisons

Nepal's prisons face chronic overcrowding, significantly exacerbating health and SRHR challenges. Selected facilities report an average occupancy rate of 271.7 percent of their design capacity, meaning they house nearly three times the number of inmates for which they were originally designed. The most extreme cases are observed in Salyan (327.5 percent) and Siraha (294.7 percent), followed by Central Jail (277.1 percent) and Kanchanpur (279.4 percent). Even comparatively less crowded prisons, such as Palpa (233 percent), accommodate more than double their intended population.

Chronic overcrowding increases the risk of communicable disease, limits personal space, undermines privacy, and intensifies vulnerabilities related to SRHR, particularly for women. These figures reflect a systemic national crisis in prison infrastructure and demand urgent policy and budgetary intervention under Nepal's prison management reform strategy.

Assessment of Health Service and SRHR Compliance in Selected Prison					
Prison	Health Unit Available (Score)	Female Health Staff (Score)	Hospital Referral (Score)	SRHR Equipment (Score)	Total Compliance Score
Kaski	1	0	1	1	3.0
Ilam	1	0	1	0	2.0
Makwanpur	1	0	1	0.5	2.5
Palpa	0	0	1	0	1.0
Siraha	0	0	1	0	1.0
Salyan	0	0	1	0	1.0
Kanchanpur	1	0	1	0	2.0
Jagannath Jail	1	1	1	1	4.0
Total Compliance Score (N=8)	5	1	8	2.5	16.5
Compliance Percentage	62.5%	12.5%	100%	31.25%	51.56% (Average)

Health Infrastructure and SRHR Compliance

An assessment of health facilities across eight surveyed prisons reveals critical deficiencies in gender-sensitive medical provision. While 62.5 percent of prisons maintain a basic health unit, only 12.5 percent employ a female health professional, leaving most women without access to confidential reproductive healthcare. Obstetric and gynaecological services are entirely dependent on external hospital referrals, reflecting a reactive rather than preventive healthcare model. Adequate SRHR equipment exists in only 31.25 percent of facilities, demonstrating significant human resource and budgetary gaps. Overall compliance across key indicators averages 51.56 percent, underscoring the disconnect between legislative intent under the Prison Act (2022) and internal healthcare capacity.

Menstrual Hygiene Management (MHM)

The review of Menstrual Health and Hygiene (MHM) provision in Nepali prisons reveals a critical failure in service delivery despite the reported universal availability of supplies. Although 100 percent of surveyed prisons reported providing sanitary pads, adequacy is undermined by the method and frequency of distribution. The majority of facilities (seven out of eight) rely on an “as needed” model, requiring inmates to request products for a basic biological necessity. This reactive approach risks humiliation and stigma, particularly in institutions where prison staff are predominantly male.

Furthermore, institutional commitment to MHM remains limited. Hygiene awareness programmes are absent in 62.5 percent of the surveyed facilities, indicating that menstrual health is treated primarily as a logistical obligation rather than as a comprehensive public health and human rights concern. The absence of structured education on proper usage, hygienic disposal, and identification of menstrual health disorders further undermines women’s dignity and autonomy. Collectively, menstrual health management in Nepali prisons operates as a minimal compliance exercise rather than as an integral component of SRHR.

At the institutional level, variations in practice are evident. In Kaski prison, sanitary pads are provided on an as-

needed basis, and hygiene awareness programmes are conducted. Ilam prison distributes sanitary pads routinely and also conducts hygiene awareness programmes. In contrast, Makwanpur prison provides pads as needed but does not conduct hygiene awareness programmes. Palpa prison distributes pads monthly without accompanying hygiene education. Siraha, Salyan, and Kanchanpur prisons provide pads on an as-needed basis, yet none conduct hygiene awareness programmes. Central Jail similarly provides pads as needed and conducts hygiene awareness programmes.

Overall, while sanitary pads are available across all surveyed prisons, the predominance of demand-based distribution and the inconsistent implementation of hygiene education reflect the absence of a systematic, rights-based approach to menstrual health management.

Pregnancy and Maternity Care

In the past three years, only seven pregnant inmates were reported across the eight prisons surveyed. The most significant finding is the complete externalisation of childbirth. In all documented cases (Kaski, Siraha, Kanchanpur, and Central Jail), deliveries occurred outside prison facilities. None of the surveyed institutions possesses the required medical personnel, equipment, or sanitary infrastructure to manage childbirth safely within the prison setting.

In Kaski, one child was delivered at Gandaki hospital, and pregnancy parole was granted at seven months, with the mother returned to custody after two years. In a subsequent case at the same facility, parole was reportedly not granted, indicating inconsistent policy implementation. The total of seven pregnancies recorded over three years across four prisons (two in Kaski, one in Siraha, one in Kanchanpur, and three in Central Jail), demonstrates both the limited number of cases and the systemic unpreparedness to address them adequately. The reliance on hospital transfer suggests that maternity is treated primarily as a security matter rather than as a healthcare event requiring continuous and specialised care. Such deficiencies are inconsistent with Rule 48 of the Bangkok Rules, which mandates the provision of appropriate prenatal and postnatal care for women prisoners.

Mental and Reproductive Health Services

The most alarming finding is the complete absence (100 percent non-availability) of contraceptive services across the surveyed prisons. Women prisoners are thereby denied the fundamental right to make autonomous decisions regarding family planning and the prevention of unwanted pregnancies, constituting a serious violation of international human rights standards. Limited access is available only through external referral in Kaski and Central Jail, indicating the absence of institutionalised, on-site reproductive health provision. Despite well-documented psychological stressors associated with incarceration, including separation from children, social stigma, miscarriage, and post-partum depression, six out of eight prisons report the absence of mental health counselling services. This significant gap demonstrates systemic neglect of the mental health dimension of SRHR, which encompassed psychological well-being alongside physical care. Furthermore, there is no provision for routine screening or check-ups for STIs, further compounding the vulnerability and undermining preventive healthcare obligations.

Policy Implementation and Institutional Support

Although legal frameworks, including the Prisons Act (2022), and the Bangkok Rules are formally acknowledged, implementation remains inadequate. Only three prisons (37.50 percent) reported conducting gender-sensitivity training for staff, and none allocated a dedicated budget for SRHR services. Half of the surveyed facilities reported collaboration with NGOs, primarily for material donations, suggesting that civil society actors are compensating for deficiencies in state-led SRHR delivery. Institutional support for SRHR therefore appears largely symbolic rather than systemic, reflecting a persistent gap between normative commitment and operational execution.

Systemic Denial of Sexual and Reproductive Health Rights in Nepali Prisons

Globally, women and girls constitute approximately 7 percent of the total prison population; however, their rate of incarceration is increasing more rapidly than that of men across all regions. Within this global context, Nepal reflects a particularly acute rights deficit. Despite constitutional guarantees under Article 35 of the Constitution of Nepal and statutory reforms introduced by the Prison Act (2022), female prisoners continue to experience the systemic denial of SRHR. The most critical structural concern is chronic overcrowding. Selected facilities operate at an average of 271.7 percent of their designated capacity, severely compromising privacy, sanitation, and dignity. Such conditions directly contravene the standards articulated in the Bangkok Rules, which require gender-responsive prison conditions and adequate living environments for women prisoners.

Healthcare provision remains grossly inadequate. Approximately 87.5 percent of prisons lack female medical personnel, compelling women to rely on male health workers for intimate reproductive healthcare, thereby undermining confidentiality and bodily autonomy. All reported childbirths occur outside prison facilities due to the absence of trained personnel, medical infrastructure, and hygienic delivery environments. While sanitary pads are technically available, most prisons distribute them only “as needed” basis, reinforcing stigma and failing to treat menstruation as a routine healthcare necessity. Most alarmingly, none of the surveyed prisons provides contraceptive services, effectively denying women reproductive autonomy and informed choice. Mental health services are similarly deficient: 75 percent of prisons lack counselling support, despite the documented psychological stressors associated with incarceration, including separation from children, social stigma, miscarriage, and post-partum vulnerability. Hygiene awareness and SRHR education programmes are either irregular or entirely absent. Institutionally, no dedicated SRHR budget exists. Facilities rely heavily on non-governmental organisations for essential supplies, resulting in inconsistent and unsustainable service delivery. Although the Prison Act (2022) introduces progressive measures, including parole provisions for pregnant women, implementation is constrained by inadequate funding, personnel shortages, and weak administrative oversight. Comparatively, Nepal mirrors the policy-to-practice gap observed across South Asia; however, it continues to lag behind jurisdictions such as Canada and Australia, where gender-responsive and trauma-informed correctional models have been more systematically integrated. Collectively, these findings confirm that the constitutional right to health remains largely unrealised for incarcerated women due to structural deficiencies, institutional neglect, and insufficient resource allocation.

Bridging the Policy–Practice Divide: Implementing SRHR in Nepali Prisons

The Nepali prison system demonstrates a pronounced disconnect between the legal recognition and practical implementation of SRHR to its female inmates. While constitutional and statutory frameworks formally guarantee reproductive health rights, the absence of female health staff, contraception services, structured mental health support, and consistent menstrual health management renders these guarantees largely ineffective. The complete reliance on external hospitals for maternity care, coupled with the absence of internal reproductive health infrastructure, indicates that pregnancy is treated primarily as a security liability rather than a protected health condition. Similarly, the lack of preventive reproductive healthcare and counselling services underscores a systematic failure to adopt rights-based and gender-responsive correctional approach. The central failing, therefore, lies not in legislative absence but in institutional inertia. Without dedicated financing, trained personnel, and enforceable accountability mechanisms, SRHR protections for incarcerated women will remain symbolic rather than substantive.

To bridge this gap between constitutional guarantees and lived realities, the following measures are recommended:

- **Appointment of female health professionals:** Deploy trained female Health Assistants (HA/ANM) in all prisons housing women to ensure trust, privacy, and gender-sensitive care.

- **Dedicated SRHR budget allocation:** Establish a specific SRHR budget line within the Ministry of Home Affairs to ensure sustainable funding for reproductive health services, equipment, and regular gynaecological consultations.
- **Routine gynaecological and reproductive services:** Guarantee unrestricted access to contraception and a range of menstrual hygiene products, alongside regular reproductive health check-ups, and screening for STIs.
- **Reform of menstrual health management systems:** Replace the reactive “as needed” menstrual health management model with routine monthly distribution systems that provide diverse menstrual hygiene products.
- **Institutionalisation of trauma-informed mental health services:** Establish trauma-informed mental health counselling as a mandatory and standard service, particularly for pregnant inmates and mothers separated from children.
- **Mother and child units and community-based alternatives:** Establish dedicated Mother and Child Units or expand non-custodial sentencing options to safeguard the best interests of children.
- **Mandatory gender-sensitivity and SRHR training:** Conduct biannual mandatory training programmes for all prison staff to strengthen awareness of SRHR obligations and gender-sensitivity practices.
- **Continuous healthcare and hygiene education:** Implement structured SRHR awareness programmes to empower inmates with knowledge regarding reproductive autonomy, hygiene, and self-care.
- **Monitoring and accountability mechanisms:** Create independent oversight mechanisms to ensure compliance with national law and international standards, including periodic reporting aligned with the Bangkok Rules.

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Women, Technology, and Abuse: Examining the Socio-Legal Dimensions of Image-Based Sexual Abuse in Nepal

Sujan Subedi**

Abstract

Image-based sexual abuse (IBSA) has emerged as a significant form of technology-facilitated sexual violence that disproportionately affects women. In Nepal, IBSA is shaped by entrenched patriarchal norms, victim-blaming attitudes, social stigma, and low levels of digital literacy, all of which hinder reporting and access to justice. This study employs a qualitative research design, drawing on primary and secondary sources, including case studies, institutional reports, and expert interviews. The research critically examines Nepal's existing legal framework, assessing its capacity to respond to the evolving and technologically complex nature of IBSA. Through comparative analysis with selected international legal responses, the study identifies significant doctrinal and operational gaps. The findings reveal that current legal provisions are fragmented and inadequate, lacking clear definitions, survivor-centred safeguards, and effective enforcement mechanisms. Social stigma and fear of isolation further deter survivors from seeking redress. The study highlights the urgent need for comprehensive, victim-centred legislation, enhanced investigative capacity, stronger collaboration with digital platforms, and improved cross-border cooperation. It concludes that addressing IBSA requires not only legal reform but also broader social transformation aimed at promoting digital accountability and gender justice in Nepal.

Keywords: *Image based sexual abuse (IBSA), technology facilitated sexual violence (TFSV), artificial intelligence (AI) and deepfakes, digital safety and governance, non-consensual image sharing*

Introduction

“It was much easier to explain the veil than to answer questions about the wounds” (Mishra, 2015). The rapid expansion of digital technology has fundamentally transformed the ways in which violence, particularly gender-based violence (GBV), is perpetrated and experienced (Ringrose et al., 2022). Among these evolving harms, image-based sexual abuse (IBSA) has emerged as a significant form of technology-facilitated sexual violence (Strasburger, et al., 2019). Also referred to as image-based sexual violence, IBSA encompasses a range of abusive practices, including the non-consensual sharing of intimate images, covert filming, sextortion, upskirting, digitally manipulated sexual imagery, and AI-generated “deepfake” pornography. The term describes a pattern of behaviours involving the non-consensual creation, distribution, or threats of distribution of nude or sexual images (Henry et al., 2022). This includes images obtained without consent (e.g., hidden recordings) as well as images obtained and shared within a private or confidential relationship and subsequently distributed beyond that relationship (Cyber Civil Rights Initiative, 2017).

Although the misuse of intimate images is not a new phenomenon, the ubiquity of smartphones and widespread internet access has significantly facilitated the perpetration of this form of sexual abuse (Holyrood, 2019). IBSA affects individuals of all genders; however, women are disproportionately targeted. Empirical studies consistently indicate that perpetrators are overwhelmingly male, often motivated by power, control, humiliation, attention-seeking, or financial exploitation. The harm extends far beyond the violation of privacy, affecting victims’ dignity, bodily autonomy, reputation, livelihood, and psychological well-being.

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From a feminist theoretical perspective, IBSA represents a technologically mediated extension of patriarchal power structures. As feminist legal scholars Danielle Keats Citron (2014) and Mary Anne Franks (2015) argue, digital spaces are not neutral arenas of empowerment; rather, they frequently replicate and intensify existing structural gender hierarchies. Technology, instead of functioning solely as a tool of emancipation, may also serve as an instrument of surveillance, commodification, and control over women's bodies and sexuality (Citron, 2014). Within societies shaped by entrenched patriarchal norms, IBSA therefore constitutes not merely an individual act of misconduct but a structural manifestation of gendered domination.

In Nepal, the socio-legal implications of IBSA are particularly acute. A pervasive victim-blaming culture, honour-based social stigma, and anxieties surrounding reputation often silence survivors, discouraging reporting and reinforcing impunity. Despite increasing incidents of digital abuse, Nepal currently lacks a clear statutory definition of image-based sexual abuse. Existing legal provisions—primarily contained within the Electronic Transactions Act (2006) (ETA) and the National Penal Code (2017) (the Penal Code)—address aspects of electronic publication and privacy violations but do not comprehensively conceptualise IBSA as a distinct form of sexual violence. The absence of clear interpretations of consent, inadequate investigative capacity, limited rapid content removal mechanisms, and weak cross-border enforcement further exacerbate the problem within an inherently global digital environment.

This article presents a socio-legal analysis of IBSA against women in Nepal, situating the phenomenon within broader technological and transnational contexts. It examines how the intersection of law, technology, and socio-cultural norms facilitates digital forms of gender-based violence. Specifically, the study explores how patriarchal attitudes and stigma shape reporting practices; analyses the implications of emerging technologies, including AI-generated deepfakes; critically evaluates the adequacy of existing legal frameworks; and proposes institutional, legislative, and policy reforms grounded in a victim-centred approach to justice.

Adopting a qualitative socio-legal methodology, the study combines doctrinal analysis of statutory provisions and relevant jurisprudence with empirical insights drawn from stakeholder interviews, institutional reports, and secondary literature. Particular emphasis is placed on analysing the ETA and the Penal Code, alongside comparative and international legal developments. While the study focuses primarily on IBSA against women in Nepal, it also acknowledges the complexities associated with cross-border cybercrime and the methodological limitations posed by underreporting and jurisdictional constraints.

Ultimately, this research argues that IBSA in Nepal is sustained not only by technological affordances but also by structural gender inequality and institutional shortcomings. It highlights the urgent need for specialised legislation, clearer definitions of consent and digital harm, rapid content removal mechanisms, enhanced investigative capacity, cross-border cooperation, and comprehensive digital literacy initiatives. By foregrounding socio-cultural dynamics alongside legal analysis, this study contributes to strengthening Nepal's cyber law discourse and advancing a more robust, rights-based response to technology-facilitated sexual violence.

Social Context and Cultural Factors

Within this broader framework, IBSA can be understood through multiple social and cultural perspectives. While certain forms of sexual violence are widely condemned across societies, other forms may be tolerated, minimised, or culturally legitimised. These variations in social perception are particularly pronounced across different national and cultural contexts, reflecting broader norms, values, and practices. In many honour-based societies, including parts of South Asia and the Middle East, a woman's sexuality—particularly the circulation of private images—is often perceived as a reflection of family honour and social integrity (Morales et al., 2025). Moreover, a problematic model of consent culture persists in which the absence of explicit resistance to male sexual advances is interpreted as implicit

consent (MacKinnon, 1998). In other words, men may be expected to cease their behaviour only when confronted with clear refusal rather than actively seeking affirmative consent. Such societal attitudes are embedded within broader constructions of sexual double standards, which judge women's sexual behaviour more harshly than that of men (Flood, 2021). Historical examples further illustrate these dynamics. For instance, during the apartheid system in South Africa, the rape of white women was rigorously prosecuted, whereas sexual violence against Black women was frequently ignored or normalised (Armstrong, 1994).

In the Nepali context, the growing concern regarding digital sexual violence can be understood through three interrelated dynamics. First, IBSA reflects entrenched patriarchal structures and misogynistic attitudes. Second, it often involves a profound breach of trust and consent, particularly within intimate or familiar relationships. Third, a pervasive culture of victim-blaming shifts responsibility away from perpetrators and onto victims, thereby discouraging reporting and limiting access to justice (Cefai, 2024). These dynamics are deeply embedded in Nepali socio-cultural norms and practices.

Several recent cases illustrate how these patterns operate in practice. In the Rinku Sada case (2025), a 17-year-old girl was reportedly gang-raped and later found dead by hanging. Instead of prioritising justice, local political actors allegedly pressured her family to accept financial compensation and remain silent. The incident was framed as a private family matter, reinforcing the notion that preserving family dignity and protecting male perpetrators may take precedence over accountability (The Kathmandu Post, 2025). This case reflects broader patterns of structural patriarchy in which social institutions often shield perpetrators rather than support survivors.

Similarly, in Jyotika's story (2023), a young woman was coerced into marriage by a man who threatened to circulate her private images. When she attempted to seek assistance, members of her family and community reportedly turned against her, labelling her "shameless." The betrayal of trust by both the perpetrator and her immediate social environment left her socially isolated, illustrating how IBSA is frequently interpreted as a moral failing of the victim rather than a criminal act by the perpetrator.

A comparable dynamic was visible in the Sandeep Lamichhane rape allegation case (2022), in which a minor accused a prominent national cricketer of rape. Public discourse and media commentary often focused less on the alleged crime and more on scrutinising the complainant's behaviour, including her social media activity, clothing, and lifestyle. Despite initiating legal proceedings, the complainant was widely subjected to public discrediting and online harassment, demonstrating how societal reactions may defend alleged perpetrators while delegitimising victims (Associated Press, 2025).

Collectively, these cases demonstrate how victim-blaming narratives, institutional silence, and entrenched notions of honour can obstruct justice and reinforce systemic patriarchy. As noted by Amnesty International (2024) and UN Women (2023), digital gender-based violence in South Asia frequently remains underreported or inadequately investigated. Long before survivors reach the formal legal system, many are silenced by the fear of social rejection, reputational damage, and community backlash.

Furthermore, many victims remain unaware that the abuse they experience constitutes a punishable offence. When intimate images are shared without consent, survivors may internalise blame and perceive themselves as responsible for their own victimisation. This knowledge gap is particularly acute among marginalised and digitally underserved communities. As a result, both victims and perpetrators operate within an environment in which legal boundaries are poorly understood, accountability mechanisms are weak, and meaningful social support remains limited.

Technology and Digital Platforms

IBSA is disseminated across a wide range of digital platforms, making its overall scale difficult to quantify with precision. The multiplicity of hosting sites, combined with the difficulty of distinguishing between images shared consensually and those shared without consent—particularly on pornography platforms—complicates monitoring and regulation (Flynn & Powell, 2019). Nevertheless, the growing body of scholarly literature and victim-survivor testimonies provides important insights into the digital ecosystems that facilitate such abuse.

Victim-survivors consistently report that mainstream social media platforms, including Facebook, X, Instagram, and Snapchat, are frequently used to circulate intimate images without consent (End Violence Against Women Coalition, 2013). In some cases, perpetrators create fake social media accounts in the victim's name in order to fabricate the appearance of voluntary sharing. Beyond public platforms, private dissemination often occurs through encrypted or semi-private channels, including messaging services such as WhatsApp, Telegram, and Facebook Messenger, as well as email and group chats (Kraus, 2020). The rapid speed of digital sharing, combined with the ease of screenshotting and re-uploading content, makes effective removal particularly difficult.

The proliferation of artificial intelligence (AI)-enabled “nudify” applications and deepfake technologies has further intensified the problem. These tools utilise deep learning image-translation algorithms to synthetically remove clothing from photographs, thereby generating fabricated nude imagery. Notably, such systems are often trained disproportionately on datasets featuring female bodies, reflecting embedded gender biases in dataset construction (Schellmann & Mauro, 2024). The asymmetrical design of these technologies demonstrates how algorithmic infrastructures can reproduce and amplify structural gender biases. The development of increasingly powerful generative AI tools further illustrates the regulatory vacuum surrounding the creation and circulation of synthetic sexual imagery. For instance, the launch of image and video generation systems capable of producing sexually explicit content involving real individuals demonstrates how emerging technologies may be misused in the absence of clear safeguards (The Verge, n.d.).

Algorithmic bias within AI systems further compounds these harms. Research on visual AI models, particularly CLIP-based systems, demonstrates that such models may disproportionately sexualise images of women, misclassify non-sexual contexts—such as pregnancy or athletic activity—as sexually suggestive, and generate sexualised deepfakes of girls at significantly higher rates than boys (Wolfe, Yang, Howe, & Caliskan, 2022). These technological distortions contribute to the broader objectification and digital exploitation of women's bodies.

Image-based abuse is frequently accompanied by character assassination. Manipulated images are often deployed to humiliate, discredit, and socially isolate victims. The experience of Anu Pariyar, a dancer from Tanahu who is active on TikTok and Facebook Reels, illustrates this pattern. She became a target of digital manipulation when explicit TikTok videos and photographs falsely attributed to her began circulating online. In response, Pariyar publicly clarified: “The face is mine, but the body is not mine, and I urge people not to be misled by these contents, which have been created by misusing my name and face” (Neupane, 2024). Her statement underscores the reputational and emotional consequences of AI-driven image manipulation. Such incidents highlight the increasing misuse of artificial intelligence technologies to fabricate sexually explicit material involving individuals, including public figures, celebrities, and political actors.

Technological vulnerabilities further facilitate such abuse. According to Er. Kamal Khanal (2025), a Senior Database Administrator, non-consensual intimate image abuse is frequently linked to intimate partner violence (IPV), with images often obtained through the hacking of personal devices or social media accounts. The motivations behind such intrusions commonly include reputational harm, coercion, or financial exploitation. Hacking-related offences

now constitute approximately 52 per cent of reported cybercrime cases in Nepal. As Khanal observes, “Cybercrime cases are increasing at a rapid rate, but our resources to address the problem have not improved significantly.” In the Nepali context, the country improved its global cyber security ranking from 106th position in 2018 to 94th in 2020. However, its overall score remained relatively low at 44.99 out of 100 among 182 indexed countries. This disparity highlights persistent institutional and technological gaps and underscores the urgent need for Nepal to strengthen its cyber security infrastructure, enhance investigative capacity, and invest in robust digital defence mechanisms to combat technology-facilitated abuse effectively.

Deepak Awasthi, spokesperson for the Cyber Bureau of Nepal Police, similarly warned that “no one is immune to character assassination, especially in the age of artificial intelligence.” He further noted that women celebrities are particularly vulnerable and emphasised the importance of proactive regulatory measures to prevent further escalation. A stronger institutional framework similar to those adopted in jurisdictions such as India and other technologically advanced states is urgently required to deter image-based and reputational abuse effectively (Khabarhub, 2024).

Taken together, these developments demonstrate that IBSA is not merely a matter of individual misconduct but is structurally enabled by platform architectures, algorithmic bias, cyber security vulnerabilities, and regulatory gaps within digital governance systems.

Stigma, Blame, and Barriers to Disclosure

Individuals subjected to IBSA are frequently blamed for sending or consenting to the creation of intimate images, rather than responsibility being attributed to perpetrators (Bothamley & Tully, 2018). Consent to engage in a sexual relationship with one person does not imply consent for others to access that intimacy. Similarly, consenting to one individual possessing an intimate image does not constitute consent to its distribution. Despite this distinction, prevailing social attitudes often disregard the principle of consent in digital contexts.

Psychological frameworks provide insight into these responses. The fundamental attribution error describes the tendency of observers to overemphasise personal characteristics while underestimating situational factors when evaluating behaviour (Tetlock, 1985). In the context of IBSA, victims are often judged through moralistic assumptions such as “she should not have taken the image in the first place”, “she is promiscuous”, or “she is deviant”, rather than recognising contextual factors such as the existence of a consensual relationship or the explicit absence of consent for dissemination (McKinlay & Lavis, 2020). Similarly, just-world theory suggests that individuals who believe the world is inherently fair are more likely to attribute victims’ suffering to personal fault rather than to structural injustice (Lerner & Miller, 1978). These cognitive biases reinforce stigma and significantly deter disclosure.

Empirical evidence reflects the scale of this problem. A multinational study of more than 16,000 adults across ten countries found that over one in five respondents (22.6 per cent) reported experiencing IBSA, yet nearly one-third (30.9 per cent) did not disclose their experiences to anyone (Umbach, Henry, & Beard, 2025). Non-disclosure is frequently rooted in fear of reputational harm, social ostracism, and institutional mistrust.

From a legal perspective, Senior Advocate Shantiram Khatiwada, former President of the Patan High Court Bar Association, argues that Nepal’s legislative framework remains inadequate to address technology-facilitated sexual abuse. He emphasises the urgent need to update laws and policies governing cybercrime, noting that reliance on the ETA and the Penal Code results in inconsistent interpretations of key concepts such as “consent”, “intent”, and “public harm”. He further highlights the absence of effective enforcement mechanisms requiring perpetrators to surrender and delete abusive content. In many cases, offenders retain the images used to inflict harm, leaving victims vulnerable to continued coercion and psychological trauma. Survivors who report abuse frequently encounter negative institutional

responses due to limited training and awareness among law enforcement and judicial actors. As Khatiwada observes, victim-blaming attitudes and social stigma discourage women from pursuing justice, as “the survivor’s dignity is often questioned before the offender’s guilt”.

International evidence reinforces these concerns. The 2024 Annual Report of the Revenge Porn Helpline documented a 20.9 per cent increase in intimate image abuse cases, representing the highest number recorded since the service was established. The report highlights significant psychological consequences among victims, including the worsening of pre-existing mental health conditions (111 cases), suicidal ideation (83 cases), depression (29 cases), and paranoia (21 cases). Social and economic impacts were also considerable, including relationship breakdowns (31 cases), employment disruption (48 cases), financial strain (52 cases), harassment from third parties (31 cases), and cultural sensitivity concerns (35 cases).

Threats to share intimate images constituted approximately 7.4 per cent of reported incidents. Such threats were most commonly transmitted through private messaging platforms, including WhatsApp (450 cases), Instagram Direct Messages (248 cases), Snapchat (123 cases), Telegram (108 cases), Facebook Messenger (87 cases), and X (30 cases), as well as through public social media platforms and pornography websites. These patterns illustrate the persistent and evolving tactics employed by perpetrators, who exploit both private communication channels and highly visible digital spaces to maximise intimidation and harm.

Collectively, these findings demonstrate that stigma, cognitive bias, weak legal enforcement, and technological facilitation intersect to silence victims and obstruct justice. Without meaningful institutional reform, survivor-centred legal procedures, and sustained public education aimed at dismantling victim-blaming narratives, barriers to disclosure will continue to persist, thereby perpetuating cycles of digital gender-based violence.

Existing Laws Addressing IBSA in Nepal

From early legal texts such as the *Manav Nyaya Shastra* to contemporary democratic constitutions, the evolution of legal systems reflects a gradual shift from defining governmental authority to safeguarding individual rights against state power. In the digital era, the concept of digital constitutionalism extends this trajectory by addressing not only the relationship between individuals and the state, but also the increasingly complex dynamics between private technology corporations and public interests within a digitally connected society (Kumar, 2024). Traditional constitutional guarantees—such as due process, equality before the law, and freedom of expression—remain highly relevant; however, they require contextual interpretation in light of algorithmic governance, platform moderation policies, and data-driven public discourse.

Although a comprehensive legal analysis is beyond the scope of this article, it is evident that the current legal framework in Nepal remains inadequate to effectively address IBSA. The emergence of digital platforms and technology-facilitated sexual violence necessitates a more nuanced regulatory response capable of adapting fundamental rights to the contemporary realities of a digital society (Gregorio, 2022). In Nepal, cyber law is primarily governed by the ETA, enacted in 2004. Legislative responses to online sexual abuse remain scattered across multiple statutes rather than consolidated within a comprehensive legal framework. While certain provisions attempt to address harassment, abuse, or rights violations committed through electronic means, they do not comprehensively conceptualise IBSA as a distinct criminal offence.

The ETA largely focuses on issues such as unauthorised access, data alteration, and the legal recognition of electronic records. It does not clearly define critical forms of technology-facilitated abuse, including revenge pornography, cyberstalking, sextortion, or the non-consensual creation and distribution of intimate images. Nor does the Act

provide mechanisms for rapid interim relief, such as immediate takedown orders to remove harmful digital content. Consequently, victims are often compelled to rely on slow criminal proceedings or the voluntary compliance of digital platforms for content removal. Section 59 of the ETA further provides that offences under the Act may also be prosecuted under other existing laws. While this provision reflects legislative overlap, it also creates ambiguity regarding the appropriate legal basis for prosecution.

Certain acts—such as privacy violations or forms of sexual exploitation—may also be prosecuted under the Penal Code. At the same time, the ETA criminalises the electronic publication of pornographic or indecent content. However, neither statute explicitly recognises or comprehensively addresses non-consensual image sharing as a form of digital sexual abuse. This fragmentation exposes a significant legal and policy vacuum, limiting effective protection, accountability, and redress for survivors.

Furthermore, the ETA prescribes a thirty-five-day statutory limitation period for filing complaints in certain cases, which presents a substantial barrier to access to justice. Survivors of IBSA frequently experience trauma, stigma, and social pressure, which may delay reporting. Throughout the legal process, including complaint registration, police interrogation, prosecution, court proceedings, and broader social scrutiny survivors often face secondary victimisation and reputational harm.

The current legal framework is also largely silent on cross-border jurisdictional challenges, despite the inherently transnational nature of digital offences. IBSA cases frequently involve platforms, servers, or perpetrators located outside Nepal, raising complex questions of jurisdiction, private international law, and mutual legal assistance. The absence of explicit cross-border enforcement mechanisms significantly weakens the regulatory capacity of the state to respond effectively to such crimes.

Finally, existing legislation does not sufficiently incorporate a survivor-centred and trauma-informed approach within investigative and judicial processes. The psychological harm associated with online sexual abuse necessitates procedural safeguards during complaint registration, investigation, prosecution, and trial. Without integrating mental health considerations and institutional sensitivity into the justice system, legal remedies risk compounding the harm experienced by survivors.

In sum, Nepal's current statutory regime remains fragmented, procedurally limited, and technologically outdated in its response to IBSA. Addressing these deficiencies requires specialised legislation, clearer definitional frameworks, extended limitation periods, effective cross-border coordination mechanisms, and survivor-centred procedural reforms capable of responding to the realities of a digitally mediated society.

Strengthening Legal Clarity, Institutional Coordination, and Survivor-Centred Responses

Identifying a problem is the first step towards resolving it. Sexual violence and the harassment of women are not new phenomena, nor is the creation or distribution of private images, whether consensual or non-consensual. However, digital technologies have significantly intensified the scale, permanence, and impact of such abuse. IBSA represents a contemporary manifestation of gender-based violence that demands both legal precision and structural reform. At the same time, it presents an opportunity to reshape public attitudes and ensure that principles of respect, privacy, and informed consent guide digital conduct (Legal and Constitutional Affairs Committee, 2016).

Integrated Support Mechanisms

Legal initiatives constitute an important means of addressing certain aspects of IBSA; however, the problem cannot be resolved through criminal law alone. Education, prevention, and awareness-raising are equally critical components of an effective response. Research indicates that victim-survivors of IBSA often value restorative approaches outside the formal criminal justice system, including acknowledgement of wrongdoing by perpetrators and broader societal recognition of the harm caused.

The current ad hoc legal and institutional frameworks not only fail to adequately support victim-survivors but, in some instances, may exacerbate their experiences by exposing them to procedural delays, social stigma, and insufficient institutional support. While reform of criminal law remains necessary, it is insufficient on its own. What is required is a coherent and integrated national strategy that combines both preventive and reactive measures, encompassing practical assistance, legal remedies, and psychological support. Such a strategy should be implemented and overseen by a public body accountable to Parliament (Ajder et al., 2019) in order to ensure transparency, coordination, and sustained institutional commitment.

Victim-Blaming and Cultural Ambivalence

Despite formal recognition that women should not be blamed for violence committed against them, victim-blaming narratives persist in both public discourse and institutional responses. In cases of personal violence, questions such as “Did she know him?”, “What was she wearing?”, “What did she do to provoke him?”, or “Why did she not leave?” continue to emerge. These responses reflect deep-seated ambivalence within social understandings of responsibility and fault. The focus is frequently shifted towards scrutinising the victim’s conduct rather than condemning the perpetrator’s actions and ensuring accountability (Meloy & Miller, 2019). Consequently, legal reform must operate alongside broader normative transformation through education, public awareness campaigns, and digital ethics training.

Ambiguity in the Criminal Law Framework

Effective prosecution and adjudication require clear and coherent legislative frameworks. Legal rules must be articulated in precise and accessible terms, leaving minimal scope for ambiguity or interpretative inconsistency. At present, the absence of explicit statutory recognition of IBSA within Nepal’s Penal Code weakens enforcement and contributes to inconsistency in judicial interpretation.

The Code should therefore be amended to expressly criminalise IBSA by clearly defining prohibited acts. These should include the digital manipulation of intimate images; the capturing, publishing, distributing, or threatening to distribute such images; and the production or circulation of pornographic content, including AI-generated or deepfake sexual imagery. A comprehensive statutory definition of consent is equally essential, explicitly addressing the recording, storage, capture, distribution, or online posting of images without voluntary and informed consent. Aggravated forms of the offence—such as those committed by intimate partners, through abuse of professional authority, or by repeat offenders—should also be specifically recognised within the legislative framework.

In parallel, the ETA requires substantive reform due to its vague drafting and reliance on broad moral terminology. The existing reference to “materials contrary to public morality” is insufficient to capture the distinct harms associated with non-consensual image sharing. The Act should explicitly incorporate IBSA-related offences and establish a verified reporting and rapid takedown mechanism mandating the removal of abusive content within a clearly defined timeframe (e.g., 48–72 hours). It should also provide for the mandatory preservation of digital evidence to facilitate effective investigation, incorporate special procedural protections for minors and other vulnerable groups, and introduce clear,

proportionate, and tiered penalties aligned with the severity of the offence. Clarifying these legal provisions would enhance legal certainty, reduce discretionary misuse, and strengthen the protective framework for survivors.

Cross-Border and International Partnership

Given the inherently transnational nature of the internet, perpetrators of IBSA frequently operate across borders or reside outside the victim's national jurisdiction. This creates significant jurisdictional and enforcement challenges. At present, the Penal Code and related legislative frameworks do not adequately address the international legal complexities associated with cross-border cybercrime.

There is therefore an urgent need to strengthen bilateral and multilateral agreements addressing cybercrime investigation, extradition, cross-border cooperation, data sharing, joint operations, and mutual legal assistance. Such agreements should establish clear procedural mechanisms to facilitate effective enforcement and coordinated responses among jurisdictions.

In addition, structured collaboration with technology companies is essential. Governments should develop regulatory mechanisms requiring digital platforms to implement rapid takedown systems, transparent reporting procedures, and clear protocols for responding to complaints involving non-consensual images. Regulatory frameworks may also require platforms operating within a national jurisdiction to maintain local registration and appoint legal representatives responsible for handling grievances and complying with lawful directives concerning content removal and evidence preservation. Without coordinated cross-border enforcement and platform accountability, legal protections against IBSA will remain largely symbolic rather than effective.

Prevention and Digital Literacy

The creation of a safe online environment must be prioritised as a preventive strategy, particularly through sustained awareness programmes addressing the growing prevalence of online violence. Recognising the darker dimensions of digital spaces, including their capacity to facilitate surveillance, track personal information, defame individuals, and perpetuate prejudice is essential. These risks should be clearly communicated to all user groups, with strong emphasis placed on digital literacy, informed consent, privacy protection, and responsible online behaviour.

Effective responses to such forms of abuse also require coordinated strategies developed through inter-state collaboration, including the strengthening of mutual legal assistance frameworks to address cross-border cybercrime. Law enforcement authorities, prosecutors, the judiciary, and other relevant stakeholders must work collectively to design long-term, sustainable, and evidence-based policies. This includes enhancing technical expertise, investing in investigative infrastructure, and identifying opportunities for international cooperation in order to ensure comprehensive technical support for the prevention, investigation, and prosecution of cybercrime.

Bridging Legal Gaps and Social Norms: The Way Forward on IBSA in Nepal

In conclusion, this study on IBSA against women highlights the evolving and complex nature of this form of digital violence. As digital technologies become increasingly integrated into everyday life, it is essential to recognise both the structural patterns that enable IBSA and the practical strategies necessary to prevent and respond to it. The findings emphasise the urgent need for multi-sectoral cooperation among government institutions, civil society organisations, and technology corporations. Given the transnational character of IBSA, future research and policy development should prioritise the creation of survivor-centred justice models, the strengthening of digital literacy initiatives, and enhanced cross-border legal collaboration.

From a socio-cultural perspective, the study contributes to broader theoretical understandings of victim-blaming, particularly in relation to IBSA. It highlights how self-blame narratives, sexual double standards, and the normalisation of sexual violence continue to shape public attitudes. Gender significantly influences victim-blaming and harm-minimising responses in ways consistent with other forms of sexual violence. Preventative strategies focused solely on abstinence or on regulating women's behaviour were widely regarded as ineffective in addressing perpetration or recognising harm.

Legally, the existing framework under the Penal Code and the ETA provides only limited recognition of digital sexual violence. The absence of explicit definitions relating to revenge pornography, cyberstalking, sextortion, and the non-consensual creation or distribution of intimate images creates interpretative gaps, resulting in inconsistent enforcement and delayed remedies. Further, insufficient attention is given to cross-border partnerships in cybercrime issues. Addressing these deficiencies requires clear legislative reform, strengthened mutual legal assistance mechanisms, and long-term, evidence-based policy planning by justice sector agencies.

Ultimately, combating IBSA requires more than legal reform; it necessitates collective social transformation. Patriarchal norms that perpetuate stigma and victim-blaming must be dismantled, digital governance structures must be strengthened, and a culture grounded in respect and affirmative consent must be fostered. Protecting women's digital dignity is not merely a legal obligation but also an ethical imperative. By integrating legislative reform, institutional accountability, technological safeguards, and social change, Nepal can advance towards establishing a safer and more just digital environment in which women can exercise their rights free from exploitation and humiliation.

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Decriminalized in Principle, Criminalized in Practice: Abortion Laws and Their Limits in Nepal

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Abstract

Abortion, defined as the termination of pregnancy, is closely linked to women's bodily autonomy and reproductive rights. In Nepal, although abortion has been partially legalised, conditional legal provisions continue to limit access to safe, affordable, and timely services. These restrictions contribute to the persistence of unsafe abortion practices, with significant implications for maternal morbidity, mortality, and the protection of sexual and reproductive health and rights. This study critically examines the National Penal Code (2017) and the Safe Motherhood and Reproductive Health Rights Act (2018), focusing on contradictions between these legal frameworks and their impact on access to safe abortion and maternal health outcomes. Employing a mixed-methods approach, the research combines doctrinal legal analysis, policy review, and qualitative and quantitative data to assess both legal provisions and their implementation. The findings indicate that inconsistencies in the law create ambiguity for healthcare providers and women, undermining effective service delivery. Socio-cultural stigma, limited legal awareness, and infrastructural constraints further restrict access, particularly for marginalised and less literate women. Although the legal framework partially aligns with World Health Organization standards, punitive elements continue to impede the full realisation of reproductive autonomy. The study underscores the need for legislative harmonisation, institutional strengthening, and stigma reduction.

Keywords: *Abortion law reform, reproductive rights, criminalization of abortion, legal harmonization, constitutional guarantees*

Introduction

Abortion, defined as the termination of pregnancy, constitutes a central component of reproductive autonomy and maternal health. In Nepal, the legalisation of abortion in 2002 represented a paradigmatic shift from a strictly punitive regime to a framework grounded in public health and human rights. This legislative reform was widely regarded as a progressive step towards reducing maternal mortality and recognising women's bodily autonomy. Nevertheless, more than two decades after legalisation, unsafe abortion remains a persistent public health concern, particularly among marginalised women facing socio-economic deprivation, geographic isolation, limited legal awareness, and entrenched social stigma. The continued incidence of unsafe procedures highlights a disjunction between formal legal recognition and effective, equitable implementation.

The constitutional order of Nepal provides an explicit rights-based foundation for reproductive health. Articles 35 and 38 of the Constitution of Nepal (2015) guarantee the right to safe motherhood, reproductive health, and women's reproductive autonomy. In furtherance of these constitutional guarantees, the Safe Motherhood and Reproductive Health Rights Act (2018) (SMRHR) recognises abortion as an element of reproductive health rights and establishes the conditions under which safe abortion services may be lawfully accessed. However, the National Penal Code simultaneously retains criminal sanctions relating to abortion outside specified grounds. This coexistence of rights-based and punitive provisions produces structural inconsistencies within the legal regime.

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The resulting dual framework generates both normative and practical contradictions. While the SMRHR Act conceptualises abortion as a matter of dignity, health, and autonomy, the National Penal Code preserves a criminal law logic that treats abortion as an offence under defined circumstances. These inconsistencies create uncertainty for medical practitioners, law enforcement authorities, and women seeking services. Tensions are particularly visible in provisions relating to gestational limits and evidentiary requirements in cases of rape and incest, where divergent legislative standards operate concurrently. Such contradictions raise broader constitutional and human rights questions regarding the coherence of Nepal's reproductive rights regime and its alignment with international obligations.

Existing scholarship indicates that unsafe abortion in Nepal is deeply shaped by structural determinants, including early marriage, inadequate access to contraception, gender-based discrimination, limited reproductive choice, and the persistence of restrictive or ambiguously enforced legal norms. Even within a partially liberalised framework, criminalisation and social stigma deter women from seeking timely and lawful services, thereby increasing reliance on unsafe methods. International bodies, including UNICEF and UNFPA, have highlighted the links between adolescent pregnancy, insufficient reproductive education, and unsafe abortion, while International Convention on Elimination of all Forms of Discrimination against Women (CEDAW) has criticised restrictive gestational limits and criminalisation for undermining substantive equality and bodily autonomy. Similarly, the United Nations Human Rights Council has urged Nepal, through the Universal Periodic Review process, to harmonise domestic law with international human rights standards. Judicial developments further reinforce abortion as a rights-based issue, notably in *Roe v. Wade* (1973) and *Laxmi Devi Dhikta v. Government of Nepal* (2009), which recognised access to abortion as integral to dignity, privacy, and reproductive autonomy.

This study adopts a mixed doctrinal and non-doctrinal research design. The doctrinal component involves systematic analysis of constitutional provisions, statutory frameworks, including the SMRHR Act and the National Penal Code, relevant regulations, judicial precedents, and international human rights standards, particularly those articulated by the CEDAW Committee and the WHO. The non-doctrinal component incorporates empirical methods, including interviews, questionnaires, and document analysis involving officials from the Family Welfare Division, health professionals, and reproductive health organisations, alongside field visits to hospitals and clinics providing abortion and post-abortion care. This integrated approach enables a critical assessment of the gap between normative guarantees and practical implementation, particularly in relation to inconsistent legal provisions and the persistence of unsafe abortion in Nepal.

Conceptual and Theoretical Framework: Abortion, Reproductive Rights, and Legal Determinants in Nepal

Abortion as a Reproductive Health Right

Abortion, defined as the termination of pregnancy prior to foetal viability, may be undertaken for medical, personal, or social reasons. It reflects a woman's autonomy to make decisions concerning her body and reproductive health. Safe abortion care constitutes a core component of sexual and reproductive health and rights (SRHR), encompassing the right to make informed and voluntary reproductive decisions free from discrimination, coercion, or violence (Starrs et al., 2018). Reproductive health, as articulated in international discourse since the 1994 Cairo Conference, refers to a state of complete physical, mental, and social well-being in all matters relating to the reproductive system, its functions, and processes.

The WHO (n.d.) defines unsafe abortion as a procedure to terminate pregnancy performed either by individuals lacking the necessary skills, in environments that do not meet minimum medical standards, or both. Unsafe abortion, therefore, represents not merely a clinical failure but also a structural and legal failure. In Nepal, unsafe abortion

persists due to limited awareness of reproductive health services, inadequate knowledge of family planning methods, social stigma, and misinformation regarding the availability of lawful abortion services (Karki, 2008).

Constitutionalism and the Rights-Based Approach in Nepal

The Constitution of Nepal (2015) guarantees safe motherhood and reproductive health as fundamental rights, reflecting the country's constitutional commitment to gender equality and bodily autonomy. This recognition situates abortion within a rights-based framework rather than as solely a public health intervention. The National Penal Code (2017) plays a crucial role by establishing legal grounds for authorised abortion, outlining special provisions for access, and defining the legal consequences of performing procedures within authorised parameters.

In operationalising these constitutional guarantees, Nepal enacted the SMRHR, the first comprehensive legislation protecting reproductive health, including safe abortion as a statutory right. Section 15 of the Act permits abortion up to twelve weeks on request and up to twenty-eight weeks under specified circumstances, including threats to the woman's life or health, rape or incest, HIV infection, severe foetal impairment, or genetic disability. The Act conceptualises abortion as a mechanism to safeguard life, dignity, and health.

Empirical data indicate that progressive abortion policies have contributed to a substantial decline in maternal mortality—from 539 per 100,000 live births in 1996 to 151 per 100,000 in 2021—demonstrating the public health impact of rights-based legal reform (Ghimire et al., 2024).

Structural Determinants: Early Marriage and Lack of Choice

Unsafe abortion in Nepal must also be analysed in the context of broader socio-cultural determinants. Early marriage remains prevalent despite statutory prohibition under the National Civil Code. According to UNICEF (2022), approximately one in three Nepali girls marries before the age of eighteen. Early marriage frequently results in early pregnancy, often without meaningful consent or reproductive choice (Raj et al., 2019). Although the legal framework safeguards reproductive rights, weak enforcement and entrenched social norms undermine these protections. Adolescents and young married women disproportionately experience unintended pregnancies and face barriers in accessing services due to a lack of decision-making power over their bodies (Thapa & Sharma, 2017). This demonstrates the gap between progressive legal provisions and the lived realities of women.

Abortion Under the Purview of Criminal Law

The SMRHR Act does not fully remove abortion from the domain of criminal law. While it recognises abortion as a reproductive health right under specific conditions, it refers to the National Penal Code for punishment where abortion is performed beyond legally permitted grounds. Consequently, abortion remains partially criminalised. Under Section 188 of the Code, abortion up to 12 weeks of gestation outside lawful conditions is punishable by imprisonment of up to one year and a fine of up to NPR 10,000; abortion between 12 and 25 weeks carries imprisonment of up to three years and a maximum fine of NPR 30,000; and abortion after 25 weeks may result in imprisonment of up to five years and a maximum fine of NPR 50,000. The retention of these punitive provisions reflects a dual legal structure in which abortion is simultaneously framed as a right and treated as a criminal offence.

Restrictive laws and the risk of unsafe abortion

Empirical and global evidence demonstrates that restrictive abortion laws do not reduce the incidence of abortion but increase the likelihood of unsafe procedures. UNFPA (n.d.) notes that restricting access to abortion does not prevent

abortion; rather, it renders the practice more dangerous. Legal barriers compel women to seek medically unsafe services, exposing them to serious health risks, including maternal morbidity and mortality. Moreover, the legal status of abortion directly affects girls' education continuity and women's participation in economic, political, and public life (Langer, 2021).

The SMRHR also introduces regressive provisions, prohibiting abortion after 28 weeks of pregnancy. In contrast, legal provisions under the Civil Code and the Penal Code previously permitted abortion at any stage of gestation where the pregnancy posed a threat to the woman's life or physical or mental health.

Criminalisation and its Consequences

The consequences of criminalisation have been starkly documented. A study conducted by the Centre for Reproductive Rights (CRR) and the Forum for Women, Law and Development (FWLD) (2021) revealed that 57 women were incarcerated in 26 prisons across Nepal following prosecution for abortion and infanticide offences. These findings illustrate the state's denial of women's access to safe and legal abortion and highlight due process concerns. The report further indicates that inadequate investigation, legal ambiguity, and retention of criminal provisions contributed to wrongful or disproportionate prosecutions. Gender bias within enforcement mechanisms and a lack of clarity in statutory interpretation exacerbated the vulnerability of women, particularly those from marginalised backgrounds. These patterns demonstrate how criminalisation not only restricts reproductive autonomy but also exposes women to systemic injustices within the criminal justice system.

International Human Rights Developments: They Are Girls, Not Mothers

In significant rulings issued on 20 January 2025, the United Nations Human Rights Committee articulated strengthened human rights standards concerning access to comprehensive sexual education, safe abortion services, and protection from sexual violence. The Committee held that denying girls access to abortion in cases of rape constitutes a violation of their rights under the International Covenant on Civil and Political Rights (ICCPR) and called upon states to amend restrictive legislation to ensure timely access to abortion and prevent forced pregnancies (UNHRC, 2025).

In findings concerning Ecuador and Nicaragua, the Committee concluded that the denial of abortion services constituted a violation of girls' rights and urged states to take effective measures to combat sexual violence. These decisions have global relevance, as more than 170 states are parties to the ICCPR, including Nepal, which ratified the Covenant in 1990. Consequently, the rulings establish interpretative standards applicable to states worldwide, including Nepal. The Committee emphasised that forcing girls to carry pregnancies resulting from sexual abuse re-victimises them and jeopardises their health, dignity, and life prospects, affirming that abortion constitutes an essential healthcare service that must be guaranteed by states.

Jurisprudential Turning Points

Roe v. Wade (1973) is a landmark United States Supreme Court decision recognising a woman's constitutional right to abortion under the right to privacy (World Pulse, n.d.). It established a trimester framework: during the first trimester, the decision rested solely with the woman and her physician; during the second trimester, the State could regulate abortion to protect maternal health; and during the third trimester, abortion could be restricted except to preserve the woman's life or health. Although later overturned, the case significantly influenced global reproductive rights jurisprudence.

Lakshmi Dhikta v. Government of Nepal (2009): On 20 May 2009, the Supreme Court of Nepal delivered a landmark judgment directing the Government to enact comprehensive abortion legislation to ensure safe, affordable, and accessible services. The case, filed as a public interest litigation, challenged barriers preventing women from accessing lawful abortion services due to financial constraints. The Court held the State accountable for failing to ensure affordability and accessibility, affirming that no woman should be denied abortion solely on economic grounds. The judgment recognised abortion as an essential component of reproductive rights and clarified that a foetus does not possess independent legal personhood equivalent to that of a born individual (CREHPA, 2017). This decision marked a transformative moment in Nepalese constitutional jurisprudence, reinforcing the State’s obligation to respect, protect, and fulfil women’s reproductive autonomy.

Legislative Contradictions, Criminalisation, and Reproductive Autonomy in Nepal

Contradiction between the SMRHR and National Penal Code

The following table summarises the key contradictions between SMRHR and the National Penal Code:

Conditions of Abortion	SMRHR Act, 2018 (Section 15)	National Penal Code, 2017 (Section 189)	Nature of Contradiction	Remarks
When the women’s health is at risk	Permits abortion up to 28 weeks with the woman’s consent, based on a doctor’s opinion that her life or physical/mental health may be at risk, or that a disabled infant may be born.	Permits abortion at any stage (no gestational limit) if a doctor opines that the women’s life or health is endangered, or that a handicapped child may be born.	SMRHR sets a 28-week limit, whereas the Penal Code has no gestational limit.	Creates confusion over permissible gestation limits, generating legal uncertainty for doctors and inconsistent application of the law.
Pregnancy in cases of rape or incest	Permits abortion up to 28 weeks with the woman’s consent.	Permits abortion up to 18 weeks with the woman’s consent.	Direct contradiction in gestational limit: 28 weeks vs. 18 weeks.	Women and providers may face legal risk if abortion occurs between 18 - 28 weeks; providers often hesitate or refer to other professionals.

No one disputes that individual who coerce a pregnant woman to undergo an abortion against her will should be punished. The primary concern, however, is whether a woman herself should be subjected to criminal sanctions. Nepal currently has two concurrent laws regulating abortion. In principle, specific legislation generally takes precedence over general law; hence, the SMRHR Act should prevail in matters relating to safe motherhood and reproductive health rights. Rather than using this hierarchical principle to remove abortion from the scope of criminal liability, the Act refers to the provisions of the Penal Code to determine punishments in abortion-related cases (UNICEF, 2022), thereby maintaining the criminalisation of women who seek abortions outside the prescribed conditions.

Misconceptions between Miscarriage and Abortion under the SMRHR

A significant concern under the SMRHR is the definitional ambiguity that conflates miscarriage and induced abortion. A miscarriage refers to the spontaneous and natural loss of pregnancy before foetal viability, whereas abortion denotes the intentional termination of pregnancy through medical or surgical intervention. Despite this medical distinction, the retention of abortion within the criminal framework has led to instances where women experiencing miscarriage

are wrongly suspected of procuring illegal abortions. This misperception fosters fear, stigma, and reluctance to seek post-miscarriage medical care, thereby exacerbating health risks and pushing some women toward unsafe practices.

Section 2(d) of the SMRHR defines abortion as the “spontaneous induced termination of foetus from uterus before it becomes capable of natural birth.” The phrase “spontaneous induced termination” is conceptually contradictory, as “spontaneous” denotes natural miscarriage, whereas “induced” refers to deliberate termination (FWLD, n.d.). Such drafting ambiguity risks misinterpretation and may inadvertently expose women who suffer natural pregnancy loss to criminal suspicion. This definitional imprecision undermines legal certainty and contradicts the protective intent of reproductive health legislation.

International Scrutiny and Normative Standards

The CEDAW Committee, in its Concluding Observations on Nepal’s Sixth Periodic Report, urged the Government of Nepal to align its laws with Sustainable Development Goals 3.1 (reducing maternal mortality) and 3.7 (ensuring universal access to sexual and reproductive healthcare). The Committee specifically recommended that women should not be criminalised in any case of abortion and that the SMRHR Act should be amended to remove gestational limits in cases of rape, incest, or threats to the woman’s life or health. It further called for adequate resource allocation to raise awareness of safe abortion services. CEDAW’s General Recommendation No. 19 affirms that coercion in reproductive decision-making, including forced or unsafe abortion, constitutes discrimination. State parties are required to repeal discriminatory laws and ensure equality in decisions concerning childbirth and birth spacing. Denial of legally guaranteed reproductive health services therefore engages State responsibility under international law.

Similarly, the United Nations Human Rights Council, through the Universal Periodic Review (UPR), has repeatedly raised concerns regarding unsafe abortion and the continued criminalisation framework in Nepal (CRR, 2025). During its 37th session (2021), Nepal was urged to decriminalise abortion and strengthen protection of women’s sexual and reproductive health rights (Human Rights Watch [HRW], 2025). These recommendations are grounded in obligations arising under the ICCPR. The UPR process reflects sustained international concern that, despite progressive legislation, enforcement gaps, legal contradictions, and social stigma continue to obstruct access to safe abortion services.

The WHO provides technical and policy guidance on contraception, abortion care (including miscarriage management), and post-abortion services. In Nepal, WHO collaborates with the Ministry of Health and Population to train healthcare providers, particularly in rural areas, to deliver safe abortion and post-abortion care consistent with international standards. WHO also co-sponsors the Human Reproduction Programme (HRP), which conducts research on abortion regulation, stigma, and health systems implementation, and monitors the global burden of unsafe abortion.

Although Nepal has enacted specific legislation regulating safe abortion services, persistent criminal provisions, definitional ambiguities, and restrictive conditions produce regressive effects on women’s health and bodily autonomy. The coexistence of protective rights language with punitive criminal sanctions reflects a structural inconsistency that continues to expose women—particularly vulnerable and marginalised groups—to legal uncertainty and health risks. Ensuring coherence between domestic law and international human rights obligations remains imperative.

Empirical Findings: Legal Contradictions, Criminalisation, and the Persistence of Unsafe Abortion in Nepal

Trend of Increasing Unsafe Abortion

Pursuant to Section 188 of the National Penal Code (2017), abortion is prohibited except under the circumstances

specified in Section 189. Any person who intentionally causes, or acts with the knowledge or reasonable belief that their conduct is likely to cause, an abortion outside these legally permitted conditions commits an offence. Penalties are prescribed according to the gestational stage of the pregnancy.

As discussed earlier, contradictions between the SMRHR and the National Penal Code generate legal ambiguity. These inconsistencies create uncertainty among both women and healthcare providers regarding the lawful scope of abortion services. Consequently, service providers may hesitate to perform abortions, while women may be deterred from seeking lawful services, thereby increasing reliance on unsafe procedures.

According to data from the Department of Health Services (DoHS) for the Nepali fiscal year 2080/81, a total of 102,357 Safe Abortion Service (SAS) cases were recorded nationally. Of these, 72.27 per cent were medical abortions and 27.73 per cent were surgical procedures. Although this figure appears substantial, it represents only approximately 48 per cent of the estimated total number of abortions. A 2024 study titled *An Estimate of Abortion Incidence and Unintended Pregnancies* indicates that only 48 per cent of abortions are performed by legally listed providers, suggesting that approximately 52 per cent occur outside the formal health system (Ipas, 2024). These data underscore the persistence of unsafe abortion practices despite formal legal reform.

Continued Penalisation within the Legal Framework

The National Penal Code does not fully decriminalise abortion. While Section 189(1)(b) permits abortion without a gestational limit where continuation of pregnancy poses a risk to the woman's life or physical or mental health, the SMRHR Act imposes a 28-week limit in similar circumstances. This inconsistency generates interpretative confusion and may expose women and providers to legal risk, particularly where abortions are performed beyond 28 weeks under life-threatening conditions.

Women may also face penal consequences if abortions are obtained beyond prescribed gestational limits or from unlisted service providers, despite the broader rights-based framing of the SMRHR Act (CRR, n.d.). The coexistence of protective and punitive provisions thus perpetuates a framework of conditional criminalisation rather than full decriminalisation. The case of Kalpana, who was prosecuted for an alleged illegal abortion following a miscarriage and later acquitted by the Siraha District Court, illustrates the human consequences of legal ambiguity. Although acquitted, she endured significant emotional and legal distress during the prosecution process (CRR, 2021). Such cases reflect the broader chilling effect of criminal provisions.

Institutional Perspectives: Interview with the Family Welfare Division (MoHP)

Field research conducted at the Family Welfare Division (FWD) under the Ministry of Health and Population included an interview with Dr Gauri Pradhan, a senior official engaged in safe motherhood and reproductive health programming. She highlighted persistent contradictions within Nepal's abortion laws and the absence of governmental action in response to recommendations issued by the CEDAW Committee.

According to Dr Pradhan, despite sustained advocacy by the Division for over two years, no concrete legislative reform has been undertaken. She indicated that the FWD has frequently been excluded from key consultations with the Law Commission, notwithstanding its central mandate in reproductive and maternal health governance. The Division has undertaken awareness campaigns, policy dialogues with members of the House of Representatives and ministers, formal submissions to the Law Commission, media engagement, and the annual observance of Safe Abortion Day. It has also conducted Value Clarification and Attitude Transformation (VCAT) training for law enforcement officials, lawyers, Chief District Officers, and municipal authorities to address stigma and misinformation.

However, progress remains limited. Dr Pradhan noted administrative tensions between the Law Commission and the Ministry of Health, as well as procedural delays attributed to the loss of records during public protests. She further observed that criminal provisions under the Penal Code have created apprehension among medical practitioners, contributing to delayed services, referrals, and potential recourse to unsafe procedures. She concluded by emphasising the need for harmonisation of the legal framework to ensure the protection of women's reproductive rights and legal certainty for medical professionals.

Key Challenges Identified through Questionnaires and Interviews

- **Lack of coordination between key governmental institutions:** There is a significant lack of coordination between the Family Welfare Division, the Law Commission, and the Ministry of Health and Population. Although the FWD is the statutory body responsible for reproductive and maternal health, it is often excluded from legislative reform processes.
- **Limited implementation of CEDAW recommendations:** Although Nepal has received recommendations to decriminalise abortion and strengthen reproductive health protections, legislative amendments have not been enacted, highlighting a disconnect between international commitments and domestic implementation.
- **Administrative disruptions:** The loss of official records during civil unrest has delayed policy processes, revealing structural weaknesses in administrative continuity and documentation management.
- **Exclusion of technical authorities:** The marginalisation of the FWD in law reform discussions undermines evidence-based policymaking in reproductive health.
- **Criminalisation of medical practitioners:** The retention of criminal sanctions has created fear among healthcare providers, leading to service hesitancy and increased referrals, which may indirectly contribute to unsafe abortion practices.
- **Persistent social stigma:** Despite awareness initiatives and professional training programmes, abortion-related stigma remains entrenched, affecting both service provision and policy discourse.
- **Limited direct international engagement:** Reduced engagement between international monitoring bodies and implementing agencies may weaken accountability mechanisms and diminish reform momentum.

Conclusion and Policy Recommendations: Harmonising Law, Protecting Rights, and Ending Criminalization

Nepal has made significant normative progress in recognising reproductive rights through the enactment of the SMRHR, which affirms safe abortion as a component of women's fundamental rights under the Constitution of Nepal (2015). However, the continued coexistence of punitive provisions under the National Penal Code (2017) has generated structural incoherence within the legal framework.

This study demonstrates that contradictions between the SMRHR Act and the National Penal Code, particularly with regard to gestational limits, criminal penalties, and definitional ambiguities—create legal uncertainty for healthcare providers, law enforcement authorities, and women. While one statute recognises abortion as a rights-based health service, the other retains abortion within the ambit of criminal law, prescribing imprisonment and fines in circumstances that overlap with lawful conditions. This duality produces a chilling effect: service providers act defensively to avoid prosecution, while women, especially adolescents and marginalised groups encounter barriers, stigma, and fear.

Empirical findings further reveal institutional fragmentation, governmental inaction on CEDAW recommendations, weak coordination between the Family Welfare Division and law reform bodies, and persistent social stigma. Although safe abortion services are available, data indicating that only approximately 48 per cent of abortions occur through legally listed providers suggest that unsafe abortion remains a significant public health and human rights concern.

Thus, despite formal liberalisation since 2002, abortion in Nepal remains functionally criminalised in practice. Legal incoherence, punitive sanctions, and institutional neglect undermine constitutional guarantees of dignity, equality, safe motherhood, and reproductive autonomy. Harmonisation of the legal framework is therefore not merely a matter of policy reform but a constitutional and international human rights imperative.

Policy Recommendations

- **Harmonisation and legislative amendment:** The Government of Nepal should urgently amend the conflicting provisions of the SMRHR Act and the National Penal Code. Abortion-related provisions should be removed from the punitive framework of criminal law and consolidated within a single, coherent, rights-based statute. Gestational inconsistencies must be resolved, and abortion should be permitted beyond 28 weeks where necessary to protect the life or physical or mental health of the woman or girl, including in cases of rape, incest, or severe foetal impairment.
- **Full decriminalisation of abortion:** Criminal penalties imposed on women and healthcare providers for abortion-related conduct should be repealed. The retention of penal sanctions contradicts constitutional protections and international obligations under CEDAW and the ICCPR. Decriminalisation should include the removal of imprisonment and fines under Section 188 of the National Penal Code.
- **Implementation of CEDAW recommendations:** The Government should take concrete steps to implement the Concluding Observations of the CEDAW Committee, including removing gestational barriers in specified circumstances and ensuring that women are not criminalised in any case of abortion. Institutional mechanisms for periodic review and engagement with treaty bodies should be strengthened.
- **Legal protection for healthcare providers:** Clear statutory safeguards should be introduced to protect licensed providers acting in good faith under the law. Eliminating legal ambiguity will reduce defensive medical practice and prevent delays or unnecessary referrals that may push women towards unsafe procedures.
- **Institutional coordination and inclusion:** The Family Welfare Division should be formally integrated into law reform discussions with the Law Commission and the Ministry of Health and Population. Given its statutory mandate in reproductive health, its exclusion undermines evidence-based policymaking.
- **Strengthening administrative systems:** Digitalisation and secure archiving of records should be prioritised to prevent the loss of policy documents and to ensure administrative continuity during periods of crisis.
- **Continued training and attitudinal reform:** Value Clarification and Attitude Transformation (VCAT) programmes should be expanded to include judges, prosecutors, police officers, and local government authorities. Legal reform alone is insufficient without corresponding shifts in institutional culture.
- **Public awareness and service accessibility:** The Government should allocate adequate resources to raise awareness of lawful abortion services, particularly in rural and marginalised communities. Public health communication must clearly distinguish between miscarriage and induced abortion to prevent wrongful suspicion and stigma.

For Nepal, the question is no longer whether abortion should be recognised as a right—the Constitution and the SMRHR have already established this. The pressing issue is whether the State will align its criminal law, institutional practice, and policy implementation with that constitutional commitment. Ensuring coherence between domestic legislation and international human rights obligations is essential to safeguarding women’s health, dignity, and autonomy.

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Gender Equality, Social Inclusion and Harmful Practices

Performative Modernity and Invisible Hut in Educated Homes: The Modern Face of Chhaupadi

Anupa Timilsina*

Abstract

This research explores the irony of menstruation, a universal, natural, and vital physiological process that sustains life, yet continues to evoke exclusion of women within families and communities. It sheds light on how, behind the polished facade of modernity, regressive traditions continue to be quietly and persistently sustained in educated households. Within the private confines of “modern” homes, girls and women endure emotional neglect, social seclusion, and the quiet erosion of their dignity, for nothing more than experiencing a natural bodily process. Through the lived experiences of 83 women and girls of menstruating age, spread across different regions of the country, including those temporarily residing abroad, this research captures how households, even educated ones, either consciously or unconsciously, continue to perpetuate practices that mirror the ideology of Chhaupadi. Through the real voices of women themselves, this study captures the raw reality, and, in many ways, the silent suffering of womanhood, marked by the challenges they are forced to navigate in their day-to-day lives and the quiet humiliations endured during menstruation. This research embarks on a profound journey to illuminate this essential yet often dismissed aspect of women’s lives, one that subjects them to recurring suffering each month. At the heart of this research lies a heartfelt aim to promote the right of all women and girls who menstruate to experience menstruation with respect and self-worth, not with shame or exclusion. Ultimately, this study contends that breaking free from such taboos demands far more than awareness. It requires courageous self-introspection and the radical unlearning of centuries-long patriarchal, religious, and socio-cultural beliefs that quietly shape our homes and our hearts.

Keywords: *Modernity, invisible hut, educated homes, modern-face-chhaupadi*

Chhaupadi: A Horrific Discrimination against Women

When we think of *Chhaupadi*, the image that comes to our mind is almost archetypal: a menstruating woman, her voice muffled, feelings dismissed, stripped of recognition as a human, treated as impure, ruthlessly banished to a cowshed, left to endure harsh and desolate conditions, while her own family, under the guise of ‘long-held tradition,’ abandons her in the most heart wrenching manner. Yet this is the story the world has seen, condemned, and legislated against—one now widely frowned upon and strongly denounced. Another story exists—the one people refuse to see even when it scares them in the face, the one they shut their ears to even when it echoes loudly. This pitiful, neglected tale, rarely brought into mainstream attention, unfolds routinely and casually within modern homes of progressive urban cities, where education soars, awareness thrives, and development reaches its peak. Here, the hut remains ‘invisible,’ yet all too visible in the unspoken rules that restrict women from exercising their most basic, constitutionally guaranteed rights and freedoms.

Chhaupadi has long existed in certain parts of western Nepal as a deeply rooted harmful socio-cultural custom. Women and girls during menstruation or after childbirth are isolated from household, social, and community activities and often are forced to live in isolated menstruation huts or livestock sheds, which in turn endangers their safety and

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health (Thakuri et al., 2021). *Chhaupadi* stems from a long-standing Hindu superstition that perceives menstruating women and girls as “impure,” with the belief that their presence will anger the gods and hamper the entire family. Consequently, women are not only banished to cramped huts but are also forbidden from touching their husbands, brothers, cattle, or crops. (Kadariya & Aro, 2015).

Chhaupadi pushes women to circumstances that leave them no choice but to endure both freezing winter temperatures and scorching summer heat inside the hut, exposing them to fatal conditions such as pneumonia, diarrhea, chest infections, suffocation, and other respiratory infections (Kadariya & Aro, 2015). In the past, numerous tragic incidents linked to *Chhaupadi* have been documented in Nepal’s western hills, ranging from sexual abuse and rape to attacks by wild animals, snake or scorpion bites, and illness (Thakuri et al., 2021). Ironically, even though they’re kept out of their homes, women still have to do hard physical work like carrying heavy loads and gathering firewood and grass, often without enough nutrition, rest, or any comfort. As a result, uterine prolapse is alarmingly very common among them. (Kadariya & Aro, 2015). The recent demise of a 28-year-old woman from a snake bite in Kanchanpur in July 2025 serves as a chilling reminder of the result of this inhumane practice (Bhatta, 2025).

In 2005, the Supreme Court of Nepal pronounced *Chhaupadi* an evil custom and directed government ministries to devise effective measures for its elimination (The Himalayan Times, 2022). Later, the Ministry of Women, Children and Social Welfare promulgated the Chhaupadi Pratha Unmulan Nirdesika, 2064 to guide local eradication efforts. The Criminal Code Act (2017) represents another attempt to eliminate *Chhaupadi* tradition. The Section 168 of Muluki Criminal Code Act (2017) further criminalized the practice, and explicitly prohibits degrading treatment, including banishing women to sheds during menstruation or childbirth, punishable by imprisonment, fine or both.

Unlike the visceral brutality of exile in the far west, this modernized *Chhaupadi*, deemed harmless, flourishes in civility and is so normalized that very few recognize it as a real issue. This modern *Chhaupadi* manifests in the homes of the well-off and educated, where a menstruating woman is barred from the kitchen and prayer spaces, not allowed to put on tika during festivities, prohibited from sharing the dining space, denied access to the family shrine, forbidden from touching family members or shared utensils, made to wash her dishes separate from the rest, forced to sleep apart and implied to self-isolate.

This article analyzes whether the criminalization of *Chhaupadi* has genuinely dismantled menstrual discrimination or merely allowed it to reappear in subtler forms under the guise of modernity. Additionally, it also discusses the modern face of *Chhaupadi* in educated urban households from the feminist perspective. Literature on *Chhaupadi* and similar practices in Nepal, South Asian, and African countries has been studied to understand the context of gender-based violence during menstruation. Additionally, a survey among the 83 women and girls from Kathmandu, Pokhara, and Chitwan – targeting educated middle and upper-middle class households was conducted to examine practical evidence of menstrual discrimination.

***Chhaupadi*: From Rural Huts to Urban Home**

Urban “modern” homes are not free from traditional restrictions that control women’s involvement in day-to-day activities, including what they cannot eat (milk and dairy products), what they cannot touch (men, water sources, livestock, plants, and kitchen items), and where they cannot go (water sources, temple, prayer room, and cultural ceremonies) (Thakuri et al., 2021). Similarly, even in societies that represent the pinnacle of modern progress, the autonomy of menstruating females is constricted by husbands, and in-laws altogether (Cardoso et al., 2019).

There are many reports from Nepal, India, and Bangladesh showing that poor menstrual hygiene can lead to infections, unusual discharge, and other health problems. Despite this, little has changed over time. The socio-cultural beliefs

regarding menstruation are so deeply ingrained in some societies in Nepal that women believe themselves to be impure, feel embarrassed of their natural bodily function, and are fearful of being blamed or bringing bad fortune if they do not strictly follow the menstrual restrictions imposed on them (Mukherjee et al., 2020). This deeply rooted internalization of impurity reveals why even urban women from educated, modern households often resist change, becoming silent bearers of menstrual restrictions, they no longer believe in.

Many women and girls don't fully understand or manage menstruation well, and this can affect their overall well-being, including school attendance and learning opportunities, an outright denial of the right to education and a safe environment (Morrison et al., 2018). Kabita Aryal, Section Chief of GBV and Geriatric Care Section at the Nursing and Social Security Division (NSSD), stated that "in Nepali society, menstruation-related discrimination and taboos are extremely common, as is gender-based violence" (Sah, 2025).

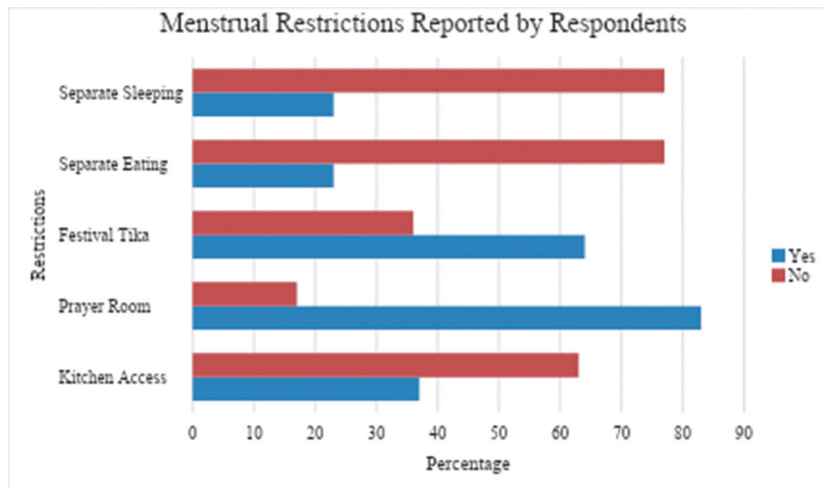
A survey was conducted to measure the *Chhaupadi* practices in modern houses. The majority of respondents were in their early twenties, with 23 years old being the largest group, followed by 22 years old. Respondents 16 to 21 and 24 to 28, were fewer (2 to 10 individuals each), While only a few respondents were over 30, at ages 36 and 49. This aligns with the study's focus on young menstruating women. Most respondents (62 percent) were bachelor's students or graduates. Grade 12 students made up 16 percent, and master's degree holders' 15 percent. A small fraction had completed SEE (4 percent) or professional/applied courses (1 percent). This indicates a highly educated sample.

Marked by a strong participation of 60 respondents, student is by far the most prevailing occupation. There are only a few respondents (roughly one to three per occupation) in other professions like software developer, CA student, engineer, and architect. Although there are many different professions represented, such as nurse, lawyer, fashion designer, civil engineer, government official, and business owner, there are only a few respondents (usually only one per occupation). Most participants were residing in cities in Nepal, primarily the Kathmandu Valley (Kathmandu 39, Lalitpur 11, Pokhara 6, Bhaktapur 4). Smaller numbers were from other Nepali cities and internationally (UK, Australia, Canada, USA, UAE, India, Austria). The parental education levels of the respondents are also moderate to high level of education. The demography, education level and residences were selected to find out the practices of *Chhaupadi* among middle and higher middle-class families, who considered themselves as educated and modern households.

Status of Menstrual Restrictions in Modern Houses

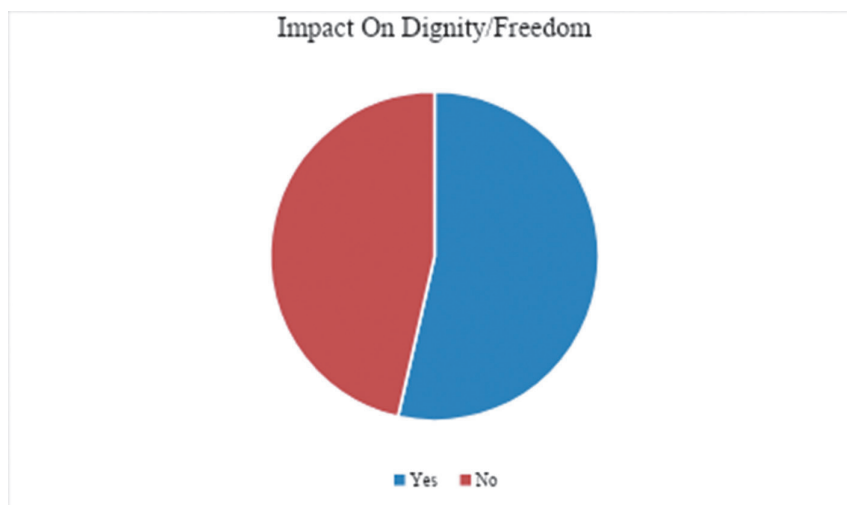
Menstrual restrictions prevailed in various households in the educated and middle- and upper-class families. They considered themselves modern households, however, inhuman and discriminatory menstrual restrictions are being practiced. Figure 1 shows 83 percent women and girls are being restricted at the prayer room in the educated and modern households. 65 percent of the respondents shared that they are restricted in receiving Tika in festivals during the mensural period. 37 percent of them still don't have access to the kitchen, 28 percent sleep separately, and 25 percent eat separately. A respondent of a 16 years old girl shared that she has working parents, while they are not at home she can't even eat because she can't enter the kitchen. She starves all day until her parents come back after work. These experiences indicate that a high level of discrimination and restraints have been practiced even in educated and modern households in urban areas of Nepal.

Figure 1: Menstrual Restrictions Experienced



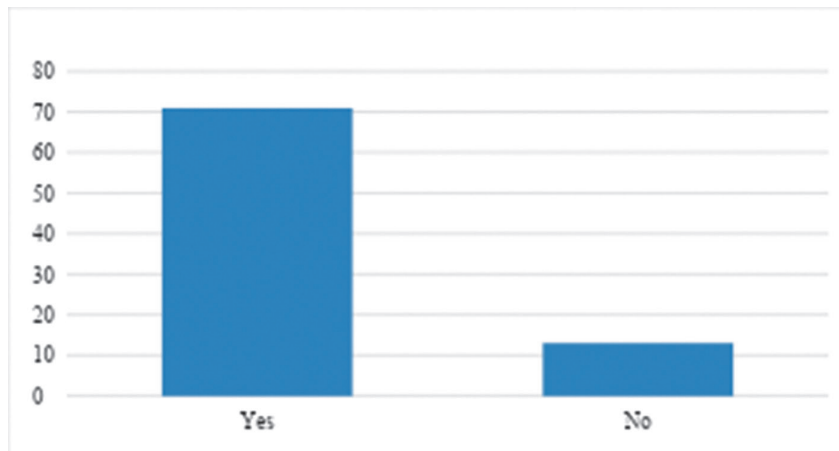
The survey presents the respondents' perceptions of how menstrual limitations impact their independence and dignity. It depicts that 54 percent of respondents reported that menstrual restrictions violate their dignity and sense of freedom, but 46 percent said that such restrictions haven't impacted in dignity and freedom. A respondent of 24 years shared her experience, "in my home, I am only restricted from worshipping or putting tika during festivals. Although these rules have not made me feel completely less than human, they do make me feel excluded and uncomfortable at times". Interestingly, it shows that almost half of the educated and modern respondents are ready to continue discriminatory practices during the menstruation period due to the belief system.

Figure 2: Impact on Dignity and Freedom



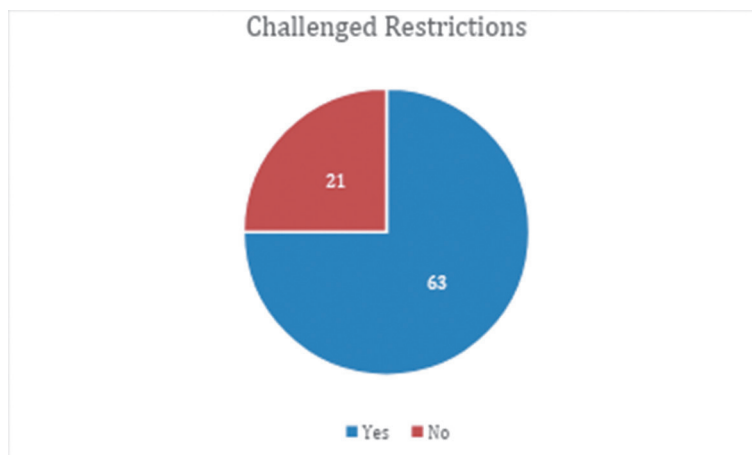
It is important to understand how the educated and modern household women and girls perceive menstrual restrictions. It was found that 71 percent respondents consider such restrictions as gender-based discrimination, and 14 percent still view those practices are not discrimination against women and girls among the urban households.

Figure 3: Perceived Gender Violence



The conscious persons who consider restrictions are violation against women and girls, they definitely challenge the discriminatory practices. This survey found that 63 percent of the respondents have challenged restrictions, reflecting how educated young women feel are unafraid to confront inequality rather than merely being passive bearers of it. Meanwhile, 21 percent of girls and women have not made any such attempt.

Figure 4: Challenged Restrictions



A 23-year respondent shared her experience. Sometimes during period, she feels deeply sad and helpless because she has to fully rely on others even for the smallest things, like eating. She requests her mother to let me at least enter the kitchen, because eating and doing basic daily things should not be tied to shame. Yet, when she tries to explain this to our mother, she lashes out. It hurts that her natural cycle, which is already hard to go through, makes me feel powerless at home. She said, "it's about my dignity, equality, and I wish her to acknowledge that menstruation is a part of life." Another respondent of 22 years argues, "just because I bleed, I am not impure. What a load! In my opinion we should be respected and cared for more by everyone during this time. No tradition should be above basic human health and worth!"

Conclusion

This research lays bare the hypocrisy of Nepali urban society and its people, where on one hand, people claim to be progressive, open-minded, liberal and are, in fact, educated and belong to good professions, yet the story behind the

four walls of their homes is vastly different from what they preach publicly. Regressive taboos and stigmas are preserved, and females are made to feel lesser than humans every month for something as natural as bleeding, barring them from prayer rooms, kitchens, temples, personal rooms, and more. Despite constitutional safeguards protecting dignity, bodily autonomy, freedom, equality, and rights to food, education, and work, many urban households continue these oppressive practices, ironically identifying as modern while remaining unaware, or perhaps willfully ignorant, of their internalized patriarchy.

The data obtained from the study serve as an eye-opener, revealing that education and prestigious professions do not automatically translate to progressive thinking or gender equality. It also highlights that laws alone are insufficient; meaningful change requires a shift in mindset. The persistence of such practices in educated homes remind us that laws could destroy the external huts of the far-west, but not the internal walls of urban people that's built with centuries of harmful beliefs, which have been so normalized that people don't question it. The dismissive attitude "It's just a restriction on the kitchen, it's no big deal, we'll bring food to you in your room" reveals a troubling blindness to the fundamental violation at play. To bar a person from shared spaces based on baseless notions of impurity is not merely tradition but an act of dehumanization. There is a saddening absence of critical reflection on why a human presence could "pollute" a kitchen. What is often rationalized as cultural practice is, in truth, a form of discrimination under the guise of normalcy. This represents a deep disregard for basic human dignity and rights, directly violating the principles set forth in the Constitution.

Recommendations

Addressing Internalized Patriarchy and Cultural Conditioning

Most importantly, the fight must begin at the dining tables of our homes, not in the policy halls of the state. Individuals must consciously interrogate the beliefs, traditions, and customs they continue to uphold, often unquestioningly, in the name of culture.

The first step toward genuine progress, therefore, lies in deconstructing the internalized inequalities and moral degeneracy that perpetuate subjugation within homes and hearts. Women, in particular, must take the lead in this process of introspection and unlearning, for they are too often both the victims and inadvertent preservers of the very systems that oppress them.

Reform Policies

The Muluki Criminal Code must broaden its definition of menstrual restrictions to encompass not only the extreme brutality seen in the far-west but also the everyday, routine restrictions that are equally violative. The law should explicitly prohibit barring women from dining areas, temples, prayer spaces within the home, schools, workplaces, and from choosing their own food, among other basic rights during menstruation.

Increase Media Representation

Mainstream media, rightly regarded as an important pillar of democracy, wields tremendous influence in shaping the very opinion of the mass through glorification and sensationalism. These powerful tools can and should be harnessed responsibly to educate the public about how menstrual restrictions are condemned by progressive societies worldwide and represent a serious violation of fundamental rights that have been fought for over centuries.

To break the stigma surrounding menstruation, media platforms should actively normalize open conversations by regularly addressing the topic. This includes featuring intellectual gynecologists, female health experts, and related

professionals in talk shows designed to help women shed the shame and secrecy associated with menstruation. Such Programmes should comprehensively cover all aspects of menstrual health—discussing hygiene products like sanitary pads, tampons, and menstrual cups; nutrition tips to boost iron levels during menstruation; remedies for cramps and pain relief such as heating pads; guidance on when to seek medical advice; and practical dos and don'ts, all framed positively as care for the body rather than restrictive rules.

Incorporation of Menstrual Education

School truly is more than just an educational institute, serving as a second home where children's worldview is formed on their journey to maturity. As the poet William Wordsworth aptly stated, “The child is the father of the man.” Therefore, menstruation must be a compulsory topic within the health education curriculum, taught openly and without embarrassment by educators.

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Nepal's Alimony Law: Gender Impact of a Blanket Approach

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Abstract

This article analyzes the effects of a blanket approach of alimony law applied in Nepal. The provision of alimony for the divorced person has been included in the National Civil Code, 2017, and is being implemented. The effectiveness, challenges and consequences of the alimony legal provision has been discussed and analyzed based on the literature review, legal analysis, interviews with a policymaker, women's rights activist, and legal experts. It reveals that the standardized framework for determining alimony overlooks critical key factors such as the duration of the marriage, economic disparity between spouses, and unpaid domestic contributions. This article strongly argues that Nepal's alimony legal framework should be revision to ensure balance and fair judicial discretion.

Keywords: *Alimony, gender justice, national civil code, legal reform*

Legal Framework on Alimony in Nepal

Alimony is known as spousal maintenance; it has been practiced for a long time, designed for financial management to support a spouse after get divorce (Reuters, 2019). The objective of this system is to provide economic support to a spouse, acknowledging the contribution made they were together as married couple. The family law provisions, such as divorce, maintenance, and alimony, were consolidated in the role of the National Civil Code 2017 in Nepal. The Code, however, follows a blanket approach, where the right and degree of maintenance are largely prescribed in general terms without much attention to the specifics of each individual case. The Civil Code, remains Nepal's principal law for divorce, alimony, and property division. It replaced earlier fragmented laws and provides clearer rights to both spouses after the end of the marriage. The most relevant legal provisions are included in Sections 99 to 102 of the code, that has detailed the provisions for sharing the property, and handle agreements on post-divorce obligations. If a woman demands divorce and it is established that the husband is at fault, the court must ensure partition of property before the divorce is granted. This includes property held jointly, or even if it is in one spouse's name but acquired during the marriage. If the property includes ancestral land not yet divided among family members, the court can involve those other family members in the partition process. When partition takes long time, the law allows the court to finalize the divorce but instruct the husband to provide monthly financial support to the wife until the property issue is settled. However, if the wife is found guilty, she may lose her right to partition or alimony. This rule is strict and leaves little room for case-by-case adjustment.

Section 100 of the Code Act instead of dividing property, a wife can request a fixed amount or regular payments. This is based on the husband's property and financial status. The Section 101 mentions that when there is no marital property to divide, the court may order the husband to give financial support based on his income. This also ends if the wife remarries or is earning more than the husband. Although meant to offer fallback protection, this assumes that income is reported honestly, which is not always the case. Similarly, Section 102 has provision for mutual agreement between spouses. It states if a couple reaches a written agreement about property and alimony, that agreement is accepted by the court unless it harms the rights of children. While this allows for flexibility, it does not account for unequal bargaining power, where a financially dependent spouse may feel pressured to accept unfair terms. Together,

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these provisions aim for fairness, but the law treats all cases the same. There is no mention of marriage length, contribution to household labor, or future earning ability. This approach creates gaps that hurt both men and women, depending on the situation.

The divorce and maintenance law in Nepal is supported by Sections 99 to 102 of the National civil code of (2017). They are composed to introduce order and clarity where there is separation, partition and spousal support. But what appears in statute to be a harmonious thing, frequently becomes lopsided in application. Most of the lawyers and judges confirm that the Code offers a set of rules and little examples on how to use them in real-life practice in a fair manner (Budhathoki, 2025). The first significant issue is that there is no clear guidance to the judges. The Code applies the same formula to all cases, even when the couple has lived long together, one member contributed more to the family and one spouse sacrificed to bring children to the family. These cases are left to be interpreted independently by the courts, and this creates end results of treating similar situations differently. Regarding this form of what scholars have characterized as a blanket neutrality, it tends to conceal inequality instead of redressing this issue.

The aspects of time in marriage, health, and income disparity do not exist as written standards or factors, and thus, the judge decides mostly on his own, making it more unpredictable (Yadav, 2023). The second weakness is the enforcement of the legal provision. It has observed that a lot of women do not receive partition on time even after a court order has been made to them. Husbands conceal property, switch occupations, or get income in a non-formal way, and it becomes difficult to collect it. The district courts had come up with family benches to aid in solving these cases more quickly but they remain overworked and slow. A maintenance order may become enforced after several months or years. This disparity between the law on paper and law in action has been one of the largest problems (Yadav, 2023). Women have been highly impacted due to such problems.

One more crucial point is that the unpaid domestic work is not weighted in the Code. Cooking, taking care of children, and all the household works are designated to women, but all of them are unpaid care works. It hasn't reflected in alimony laws. According to scholars, as long as property is registered in the name of men, women do not appear to be recognized by law (Budhathoki, 2025). Consequently, although the Code is said to be gender-neutral, it tends to reproduce gender prejudices since it holds income in higher regard than care work.

The flaws further hinder the effectiveness of justice delivery. Section 99(5) of the Code permits the granting of interim relief; however, judges seldom award such relief unless there is clear evidence of severe financial hardship. Moreover, in most cases, women must wait for years to receive alimony. There is no appropriate mechanism to monitor the payment made as per the order of the court and no database of enforcement at nationwide level. Section 100 states that once a woman remarriage, she can't get alimony from the divorced spouse. The judicial system in Nepal is also such that it is largely dependent on the interpretation of the individual judges.

National and international researchers have given reports in the recent past indicating that formal legal rights had failed to translate into economic security of women following a divorce. The standard of living of women reduces drastically on separation, particularly where children are concerned (UN Women, 2018). Court-provided support is discouraged by procedural delays and social stigma even when provided, even in situations where courts grant support. Consequently, the maintenance law does not fulfill its fundamental purpose, which is poverty prevention after divorce. In brief, the existing system is very formal but unable to provide justice. Nepal must have gender-sensitive interpretation, application and realization of which should be practical, as well as acknowledgement of the unpaid labor.

Alimony Law Practice: A Gender Justice Perspective

While the statutory framework governing alimony in Nepal is articulated under Sections 99 to 102 of the *Muluki Civil Code, 2017*. The judicial interpretation in this domain remains nascent and relatively underdeveloped. Existing jurisprudence offers limited precedential clarity, with only a handful of rulings elaborating on the principles underpinning post-divorce spousal support. Nevertheless, some of the Supreme Court decisions offer valuable insights into the courts' evolving approach to maintenance obligations, particularly in circumstances involving economic deprivation and procedural delays.

Although the legal system of Nepal seems to be gender-neutral, judicial discretion tends to emulate gendered notions of dependency and care giving. Not all the non-financial contributions like domestic labor are recognized by courts and judges can underestimate the economic strength of women. It shows that even with legal safeguards, traditional gender roles and social norms are still influencing judicial results. The code has ensured the legal obligation of the husband even if divorced spouse become self-sustained. The decision no. 724 of the Supreme Court verdict even if the wife, having been denied food and shelter by her husband, manages to sustain herself through alternative means, such self-sufficiency does not absolve the husband of his legal obligation to provide maintenance. It emphasizes the continuing nature of legal responsibility deriving from marital ties. It articulates an important principle: the ability of a dependent spouse to survive through informal or external support mechanisms does not extinguish the legal duty of the financially dominant spouse.

Similarly, the importance of interim relief mechanisms within family law adjudication. Recognizing that procedural delays in the execution of property partition may create conditions of economic precarity for the claimant, the Supreme Court affirmed the judiciary's responsibility to guarantee temporary maintenance. In doing so, the Court acknowledged the broader principle that substantive rights must be accompanied by effective procedural safeguards to ensure meaningful access to justice. The emphasis on interim support reflects a progressive understanding of the lived realities of women navigating the legal system post-separation.

In this case, the Supreme Court addressed procedural discrimination in how divorce cases are handled for men and women. The petitioner had challenged the existence of different legal procedures based on gender in matters of marital separation. The Court agreed that this unequal treatment could affect both women and men negatively.

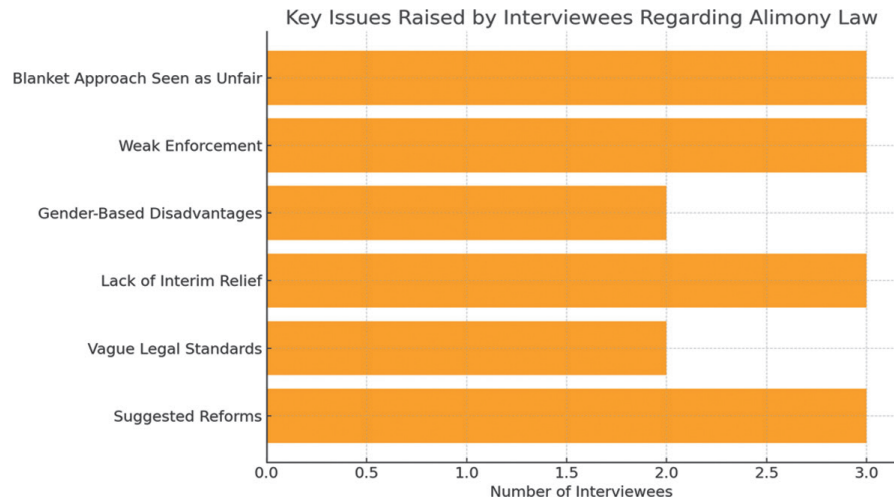
The bench observed that applying different procedural rules to husbands and wives in divorce cases does not serve the interests of justice or empowerment. Instead, it may reinforce outdated assumptions about gender roles. The Court stated that when legal processes are not uniform, they risk treating one gender as inherently superior or inferior in the eyes of the law. This undermines the principle of equality that the Constitution of Nepal guarantees to all citizens.

Most importantly, the decision called for the government to review and reform laws where such procedural differences exist. It urged that legal reforms should promote harmony and uniformity—ensuring that all individuals, regardless of gender, face the same procedural requirements when seeking a divorce. This ruling is important not only because it identifies a gap in the legal system, but also because it links fairness in procedure to broader goals like gender justice and equal citizenship. It suggests that without procedural equality, substantive equality is also at risk. However, the impact of this decision remains limited in practice, as no formal legislative amendments have yet been made to reflect its recommendation.

Enforcement Challenges and Required Legal Reforms

There are provisions in the National Civil Code 2017 on providing anomaly or sharing the property to the divorced spouse. However, various reasons have been hindering to provide justice to the women after divorce. The empirical data also shows that six major reasons have played a significant role in ensuring gender justice on such cases.

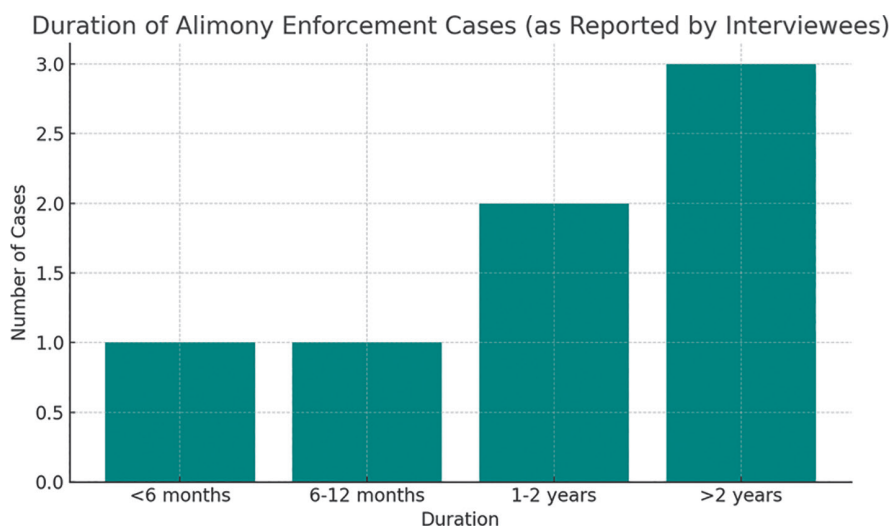
Figure 1: Key Issues Raised by Interviewees Regarding Alimony Law



Blanket approach seems one of the major hinder in providing gender justice to women after the divorce. Nepal’s legal framework applies a single set of rules to highly varied life situations, so, the law fails to account for the length of the marriage, the presence of children, economic dependence, or unpaid domestic work. A lawyer says, “A two-year marriage with dual incomes is not the same as a 20-year marriage where the woman raised three children and left her job. But the law treats them the same. Such nuances need to be taken care and should made laws and policies accordingly to ensure the rights of the divorced person¹” An activist similarly analyzed that long-term domestic role of women has to be compensated by the law but the law doesn't consider it seriously.

The existing legal provisions on the legal entitlement and alimony haven't been implemented effectively. Women often win court orders for alimony but struggle to receive payment. The legal provisions are unable to provide justice on time to most of the women. Survey conducted for this study shows that the majority of the cases take more than two years to get alimony, which indicates the lack of required provisions in the law itself.

Figure 2: Duration of Alimony Enforcement Cases (as Reported by Interviewees)



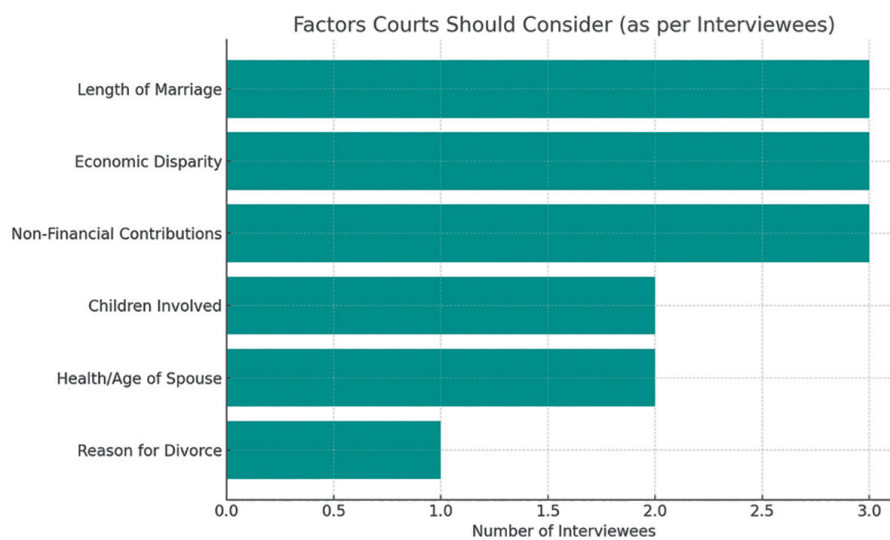
1 A lawyer shared opinion during an interview

Interim Relief: Rare and Inaccessible

Section 99(5) of the Code allows courts to grant temporary monthly support until partition is settled. However, this provision is underused, and many women even do not even know this right exists. In addition, some judges hesitate to offer temporary relief without full property disclosure, which can take years.

One of the starkest revelations was the list of factors that courts often overlook when awarding alimony or ordering partition. Nepal’s current framework fails to guide judges to consider the duration of marriage, differences in income or earning potential, unpaid contributions (housework, childcare), the age and health of the divorced parties, and the presence of children or caregiving responsibilities. These factors, though common in other legal systems (e.g., India, UK, USA), are absent from Nepal’s provisions that has created problem to get alimony on time.

Figure 3: Factors Courts Should Consider (as per Interviewees)



The lack of consistency in court rulings is other challenge in exercising right to alimony in Nepal. While one judge might be sympathetic and consider a woman’s unpaid work, another might reduce her claim if she doesn’t have proof of ownership. This subjectivity leads to discouragement among women considering litigation. The legal drafter acknowledged that without a statutory checklist or framework, courts rely too much on individual interpretation.

In the context of Nepal, the law on alimony is general, and status of the existing provisions are poor which has impacted in getting justice on the cases of divorces. The law needs to be revisited, community-based support systems and paralegal assistance need to be established to ensure the rights of alimony. The use of a blanket approach while implementing this law, creates unintended injustice, especially for women who have sacrificed career opportunities, remain financially dependent, or face difficulty accessing courts. The current legal model does not offer predictable, fair, or timely remedies.

Conclusion

This article has analyzed the implications of a blanketing approach to alimony in the National Civil Code of Nepal, which is, Sections 99 to 102. It shows that legal framework gives a one-size-fits-all framework to divorce in marriage without any consideration of the length of marriage, economic roles and care giving that can’t resolve the diverse problems associated with marriage and divorce. So, required reform in the law is essential which need to be amended through an intensive consultation with the concern stakeholders. The enforcement agonies seem that they are lacking

knowledge and sincerity on the alimony issues, and haven't come out from the patriarchal prejudice. An intensive intervention targeted to the law enforcement agencies are required to implement the legal provisions effectively.

The Government and Civil Society-led educational institutions, and media need to provide legal literacy awareness on alimony, property rights, and remedies available. It is also important to create emergency support cash or shelters to those women who are waiting on alimony or trapped in protracted court cases usually do not have very basic needs. The temporary support fund that can be provided by the state would be used to pay basic expenses until the formal legal procedure is completed to facilitate the transition into the post-marital life.

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Gig Economy in Nepal: Gender-Based Discrimination in Ride-Sharing Platforms in Kathmandu Valley

Karma Chhiring Tamang* ·

Abstract

The gig economy in Nepal is an emerging form of work that challenges traditional labor patterns while simultaneously reproducing many of the inequalities embedded within them. This article examines the gendered dynamics of gig work in Nepal, with a particular focus on ride-sharing platforms such as Tootle, Pathao, Indrive, and Yango. Drawing on a mobile ethnographic approach supported by participant observation, informal interviews, and autoethnographic reflection, the research explores how gender is negotiated through everyday encounters between riders and customers in Kathmandu's digital and physical spaces. The findings reveal that women's engagement with the gig economy remains limited and is shaped by structural patriarchy, and digital exclusion. While the platforms claim neutrality and empowerment, their design and operation often reinforce binary gender roles, privilege masculine mobility, and overlook the recognition of the identity of Gender and Sexual minorities. Moreover, the absence of clear legal protections and employment recognition further marginalizes women participants, exposing them to insecurity and exploitation.

Keywords: *Gig economy, platform-based ride-sharing, mobile ethnography, gender and social identities*

Gig Economy: A gender Perspective

The term gig economy was first popularized by British-American journalist Tina Brown in 2009 and has its origins in short-term engagements, particularly within the music industry (Mahato, et al., 2021). The gig economy refers to a part of the economic system that involves workers engaged in flexible, temporary, and freelance jobs. De Stefano discussed gig work linking it with work where online or mobile platforms match job opportunities with workers, offering flexible schedules to meet demand and supply (De Stefano, 2018). These jobs are characterized by short-term or temporary contracts, or sometimes by the absence of any formal contracts between employers and employees. In general, the gig economy is a labor market that facilitates opportunities for both employers and employees to engage in freelance work contracts instead of full-time, permanent work positions. Gig work refers to task- or project-based work that is completed digitally and compensated upon delivery. This type of work is typically facilitated through online outsourcing platforms, which serve as digital marketplaces connecting employers with workers, allowing for flexible, short-term job opportunities across various industries. It comprises markets for several sectors, which include ride-sharing, e-commerce delivery and food delivery, online tutorials, fixed-term projects, freelance, and many more. The most important aspect of the gig economy is that it boosts productivity across all segments of the labor force, leading to an overall increase in the economy's income-generating capacity. Besides this, the gig market has also offered women for flexible work options. The gig market provides opportunities for women to start their businesses or work independently, which can be empowering and help them overcome traditional workplace barriers.

In Nepal, the gig economy is a relatively new phenomenon and largely limited to urban locations. This is relatively a new form of organizing work. Key platforms include *Foodmandu* (food-delivery), *Tootle* (ride-sharing), *Pathao* (ridesharing), *Khalti*, *iPay* and *eSewa* (online-payment), *Aayoexpress* (on-demand delivery), *Chamkilo* (laundry service).

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Foodmandu, launched in 2010, transformed conventional business practices by offering doorstep delivery from over 150 restaurants in Kathmandu.

Ride-sharing platforms like *Pathao* and *Tootle*, have quickly become popular, addressing gaps in the public transportation system. While these platforms claim to improve mobility, they reflect global platform economy characteristics such as centralized control and profit maximization, which can generate conflicts to interest between the platform and riders.

Studies also highlight the gendered nature of platform-based work. Despite local emergences, these platforms reinforce structural inequalities, including limited opportunities and safety risks for women riders. To date, Nepal lacks research on these dynamics. This paper thus, explores the emergences of ride-sharing platforms in Kathmandu and the social, local, and global dynamics associated with them, focusing on *Pathao*, *Tootle*, and emerging competitors.

Since the gig economy in emerging economies like Nepal is still in its nascent stages. Sufficient studies haven't been conducted on these areas in Nepal. It is very hard to find literature written from a gender perspective on the gig economy in Nepal. In this article, the available literature has been reviewed, and empirical experiences of women workers in the gig economy have been observed and analyzed. Mobile ethnography, observation, informal interviews, and interactions with the motorbike riders using digital platforms like *Pathao*, *Indrive*, *Yango*, and *JumJum* between August and October 2025 to collect data for this study. The study was conducted in the Kathmandu Valley, where ride-based platforms are highly active. This article aims to discuss the status of gender representation in the gig economy areas, particularly in ride-based platforms, and gender-based disparities faced by women working in this sector in Kathmandu.

Women in Gig Economy in Kathmandu Valley

Much of these digital developments can be seen as a radical break with the past. It has been only two decades, since the start of 1990s, for Nepal, there has been a fundamental structural shift from agriculture to mixed economy, as a part of the country's urban and spatial economic transformation (Muzzini, and Aparicio, 2013). The platform-based economy can be seen as a part of this urban and spatial economic change. Additionally, such digital technologies often come to intervene in existing sets of social relations (Doorn, 2017). For instance, in the context of Kathmandu, those who enter these platforms as a consumer and as a service provider often hold different gender positions, yet through this new way of organizing work they come to interact intimately.

Gender therefore is an important aspect, which interacts deeply through online platform mediated works. Recently reported news on a national daily depicts that, "ride-sharing services are fast and reliable, which is why most people like using them. But increasingly, uncomfortable situations and incidents of harassment have tainted the experience for many women" (Gurung, 2019). These platforms promise flexibility of working hours, equal pay for equal work. Because, these platforms are online and are horizontal not hierarchical, it all seems attractive for women to get involved quite easily (Barzilay, and Ben-David, 2017). In contrast, Kathmandu's case – less involvement of women as a rider in comparison to men on these ride-sharing platforms speaks different story than in the western context. In Nepal, women are stigmatized to enter into specific job market, especially if it is largely dominated by man, such as transportation (K.C., Van Der Haar, and Hilhorst, 2017). There may be less involvement of women on the service providing end but at the service using end women are the majority and are the frequent users (K.C. S., 2017). Thus, it raises a question - how are gender relations negotiated through these platforms like– *Tootle* and *Pathao*.

Since, *Tootle* and *Pathao* started functioning, there has been much noise in the capital city - Kathmandu. For example, there is 'vlog' about these platforms on YouTube, media coverage of these services on a regular interval by comparing these two similar natured platforms on the basis of their service and usage of their digital application (Biel, Aran, and

Gatica-Perez, 2011). These media coverage is highlighting the positive side of ride-sharing platform in the Kathmandu valley, such as ride-sharing is solving everyday commuting and hassle free (Sapkota, 2017). However, the recent news coverage suggests the other side of these platforms. For example, these platforms have not been able to discourage harassment of women despite of their claim to have a mechanism in place to do so (Gurung, 2019). This raises the social concern of gender within this new form of economic practice through online platform. This article, therefore, aims to answer gender concern raised by the ride-sharing platforms like – *Pathao* and *Tootle* – as listed in the following section.

Women in the Ride-Sharing Platforms

“Gender is not a set of traits, nor a variable, nor a role, but the product of social doings of some sort (West, and Zimmerman, 1987).” Gender is “constructed through psychological, cultural, and social means” in everyday activities of some sort. For instance, the expectation from society of an appropriate action and behavior just for being women, such as letting men to help with masculine act, and not offering opinion to have things ‘her’ way. All of these everyday activities must be done in such a manner that must be seen in a socially normative gender behavior (West, and Zimmerman, 1987). Thus, gender can be defined on the basis of “socially constructed relationship between women and men, among women, and among men in social groups” (Gerson, and Peiss, 1985).

Globally, in the platform-mediated work ‘its workforce remains systematically inserted in a realm created by the capitalist value form, which centres on the gendered and racialized subordination of low-income workers, the unemployed, and the unemployable’ (Doorn, 2017). As a patriarchal society – in Nepal historically women there have been suffering from gender inequality. Women in the Nepali society have often been subject to their man counterparts either as a father, husband or brother, and are subject of domestic confinement (Acharya, 2006). Additionally, the diversity in poverty in Nepali society can be observed due to caste (Bahun and Chhetri), class (upper class) and gender (man) having greater access to resources and occupying superior positions than women demonstrate this from the experience of Nepali women in a regular household and the emerging platforms in gig economy. This very gendered nature can be found in platform-mediated work globally, including Nepal, where the gender normativity stigmatizes women from involving in the male-dominated public sphere. Transportation sector is a male-dominated sphere, and ridesharing platform too, where riders meet customers who are complete strangers. This puts women in a risky position by, for example, possibility of harassment by the man rider or social stigmatizations.

Therefore, power in a patriarchal society like Nepal – it is often observed in the hands of man. It is also observed, so far, the practice of ride-sharing platform as a masculine trait greatly intersects with gender of an individual identity. It greatly speaks within the ride-sharing – the intersection of gender and gig economy that is embedded in a cultural practice.

Digital dimension: Gender perspective

It is often thought that internet-mediated platforms are ‘neutral’ in terms of social relations because of its nature of functioning on the digital dimension, and thus, being out of everyday social practices. Yet, it is found that the digital dimension is not separate from social practices. It is embedded in the everyday practices, including gender, since these platforms emerged out of the everyday necessities (e.g. mobility, livelihood) of the people. Doing gender involves a multifaceted perception, interaction, and micropolitical activities within the society where the platform is embedded. Ride-sharing platform as an everyday practice on a digital dimension is gendered.

The ratio of man riders is extremely higher than women. And these ride-sharing platforms claim that there are more women customers than man. This study shows that the number of ride-sharing platforms users are significantly higher

than man. The practice of “separate sphere” for men and women is still prevalent in the ride-sharing – man is expected socially to go out work and live in a public sphere whereas, women still struggle to break the domestic confinement (Gerson, and Peiss, 1985). My experience in the two-month long field work also demonstrated that finding a women rider is rare. It is an interesting fact that majority of riders are man and majority of customers are women. These platform applications are also designed in such a manner that they reflect the gender binary by letting customer and rider both letting them choose either man or women. They do not allow to choose other genders for example, the ‘other’ represents the Gender and Sexual Minorities. It is clear reflection of the social normative practice on the digital dimension of the platform where the recognition to other genders is kept silent and given focus to either man or women to maintain the stereotypical gender binary on the basis of sex.

Gender-based Discrimination and Platforms Initiatives

Recruiting more women as rider by the platforms is probably the most effective strategy to increase the share of women passengers. Women riders convey a sense of safety and security to women passengers (Jenkins, et al., 2020). Tootle has built this factor into its ride-sharing app by allowing passengers to choose between men and women riders. However, attracting more women riders is a challenge. The ride-sharing platforms seek to address this by championing women as riders in their advertisements and by depicting ride-sharing as a women’s practice, involving women riders and women passengers. The platforms also publish success about women riders that carefully weave together the benefits of being a rider with aspects of women’s conventional gender roles. Tootle also sought to attract women riders by not charging them a commission (initially it charged men riders a 4 percent commission).

Tootle not only creates its supply of riders in gendered ways, following the theoretical premise that platform companies are in the business of making markets it does the same for demand (Barratt, Goods, and Veen, 2020). For the public this is less visible; yet, probably more impactful. In its rider’s interface, Tootle represents demand for ride-shares in hetero-normative ways: customers are presented as either women or man.

Research in 2019 suggests that riders (who are mostly men), indeed, use this to give preference to women passengers (Hamal, and Huijsmans, 2021).

“Women passengers rarely complained about long waits. One woman customer who mostly used Tootle said: “I never had to wait more than 10 minutes for a ride-request sent.” In contrast, men frequently complained. One said: “It will be a pleasant surprise if I ever get a ride without waiting for more than 30 minutes.”

Allowing riders to give preference to women passengers can be argued to make ride-sharing more women-friendly because it reduces waiting times for women.

A man customer interviewed referred to a response he got when he complained to a (man) Tootle rider who picked him up after a long wait: “You should feel lucky, because you are my first man customer [today]. I never give rides to man but only to women. Why would I become a rider otherwise — it’s fun having a woman on the back of my bike.”

While in this specific case no woman was negatively affected, the rider’s attitude mirrors those collected online from women passengers reporting harassment by man riders both during and after the ride-share. These incidents happen despite compulsory onboarding of new riders in which ride-sharing platforms instruct newly recruited riders about avoiding unwanted behavior.

New riders are told to not tease women customers, to refrain from comments that could be interpreted as sexual innuendos and to refrain from asking women customers to sit closer to the rider, or to brake in such a manner that the body of the woman passenger touches the rider.

Recruitment efforts targeting women as riders have not only created new opportunities for paid (part-time) work for women, it also contributed to further shifts in gender norms in urban transport (Brunson, 2013). However, the gender justice argument put forth by Nepal's ride-sharing platforms must be recognized as a business strategy. When platforms make markets in gendered ways, this creates gendered tensions.

Most notably, allowing rider selection based on the passenger's gender seems beneficial to women initially but it encourages sexist attitudes and creates the potential for gender-based violence. Over recent years, Nepal's ride-sharing platforms have improved complaint and tracking mechanisms to combat sexism. Yet, the failure to increase the share of women as riders delimit the inclusiveness of ride-sharing platforms. Improving women's riders working conditions is one of the ways to address this.

When a person is registered on the platforms, first thing stressed by the platforms to their rider is to respect their customer. *Pathao* specifically orients its newly registered riders not to get involved in any kinds of sexual harassment activities during the shared ride.

“I feel *Pathao* is trying to basically aware its users about the intricacies of the gender-based violence. Do not ask women customers to sit closer, don't touch them, don't use the brakes unnecessarily while sharing ride with women customer which forces their frontal body part to touch you”.¹

It is found through the interaction with the riders that the orientation was based on the empowering “sex-related consciousness”, where riders were oriented on the social normative practice.

The platform has made the orientation training a compulsory compliance for each rider, without which they cannot continue their role as a rider. The inclusion of two compulsory sections titled; One, reasons for suspension and two, reminder for the riders specifically focuses on training riders with regards to sexual and gender-based violence consciousness.

However, the actual practical relevance and implications of this initiatives is found either un-executed or taken with less seriousness. While I heard such practical Programmes were being initiated by *Pathao*, other new competitors found a way to capitalize such strict registration process of *Pathao* to their favor. *Indrive* and *Yango* both of them have taken no care at all in such process of compliances for the rider's registrations when they first navigated the market against big giants like *Pathao*. A rider shared, “*Pathao* has provision of mandatory orientation, but *Indrive* does not, so registered on *Indrive*”. It shows riders are not interested in participating in training, on the other hand, riding platforms are not sincere about gender-based violence.

These market dynamics among the riders and the platforms have failed to assist the initiatives likes of *Pathao*. The questions still remain as to whether such initiations will meet the objective and goals, which is to ensure perfect solution to any possible sexual harassment issue, gender stereotypes and other social evils, that a person can encounter in their ride-shared.

The ride-sharing platforms are embedded in the everyday practice of doing gender because the emergence of such platforms has become everyday necessity of the people. Thus, despite of its claim that it is neutral because of its digital functioning and modern-day initiatives— it is not away from the socially practiced gender norms. From its digital design to actual encounter of riders and customer manifest the gender through their shared ride. All of it is done by reproducing traditional social norm of gender binary practice based on the individual's participation in the platforms – who sits on the back of motorcycle (customer); and who is riding the motorcycle (rider).

1 *Pathao's* Rider shared that orientation is a compulsory class, which he took at 15th October 2025.

Legal Provisions: Addressing Gender-Based Discrimination at Work

The emergence of ride-sharing services signifies a change in the global transportation landscape. Globally, ride-hailing services such as *Uber*, *Lyft*, and similar platforms have revolutionized transportation by offering reasonably priced and practical options for transportation. Services like *Pathao* and *Indrive* have sprung up in Nepal to effectively handle transportation needs. The year 2017 saw the release of the first ride-sharing app i.e. *Tootle* in Nepal. At the time, there was no particular law addressing the ride-sharing industry in Nepal. Conventional transport service providers frequently considered ride-sharing platforms to be engaging in unlawful passenger transportation activities. Private vehicles are still prohibited from being used for public transportation, as per Section 8 (2) of the Motor Vehicles and Transport Management Act, 1993 (2049). As ride-sharing business models, which often involve private individuals using their vehicles to transport passengers, the Act inadvertently puts a restriction on Nepal's ride-sharing industry.

With the new development in the transportation sector, a few progressive moves have been initiated in Nepal. Bagmati Province enacted a Vehicle and Transportation Management Act, 2019 and started implementation on 1 February 2019. It was the first legislation of Nepal that recognized the ride sharing business through provincial law. Section 13(4) of Bagmati Province Vehicle and Transportation Management Act, permits private vehicles with standard number plates to operate in public transportation through ride-sharing apps, marking a significant departure from federal law. Similarly, Section 13(4) of the Gandaki Province Transportation Management Regulation Act, 2019 has acknowledges the transformative impact of ride-sharing and allows private vehicles for public transportation with specific regulations for safety and oversight, showcasing Gandaki

Patan High Court on 12 February 2020 in the case of Akhil Nepal Labor Taxi District Committee v. Ministry of Physical Infrastructure and Transportation (Writ No. 076-WO-0392), the court addressed a petition from the Taxi Association regarding alleged illegal passenger transportation by private vehicles. The decision underscored the necessity for adaptable legal frameworks to accommodate evolving technologies like ride-sharing. It acknowledged the challenges presented by ride-sharing apps within prevailing federal laws such as the Transportation Management Act of 1993 and highlighted the law inadequacies in regulating such services. The court stressed the importance of federal regulations to uphold public safety, advocating for collaborative efforts between ride-sharing companies and governments to formulate comprehensive policies. This judgment allowed for the operation of ride-sharing businesses and also instructed for the amendment and implementation of relevant laws.

On 1 February 2024, the government officially recognized ride-sharing services as a service-oriented industry under the Industrial Enterprises Act, 2020. This amendment, published in the Nepal Gazette, granted legal status to ride-sharing companies, affirming their place within the industrial sector.

The Federal Ministry of Physical Infrastructure and Transport² is in the discussion phase and has formulated draft on nationwide guidelines to regulate ride-sharing services, aiming for clarity and standardization. These guidelines come with their own set of legal challenges, particularly due to existing federal i.e. Section 8(2) of the Motor Vehicles and Transport Management Act 1993, prohibiting private vehicles to use for public transport. Amendment of the main Federal Act is deemed necessary for smooth guideline implementation and operate the ride sharing service business freely without any legal questions.

Despite the disruptive success over the years, there are pertinent service and employment issues relating to ride-hailing business in Nepal. The legal questions faced by riders and platforms are still largely untested by the courts of Nepal. The public administration has also not provided any policy clarity in relation to the same. In Nepal, a person is considered an employee of another, if they are working for any registered entity or an individual hires an individual

2 Ministry of Physical Infrastructure and Transport. <https://mopit.gov.np/>

for service or work, and the both parties should have a contract of employment. is entered between the entity and the individual. Even if the contract is not per se titled as contract of employment, the contract is such that an employer-employee relationship is created, the same would be deemed to be a contract of employment.

People employed for business operations and management will obviously be considered as employees. However, the issue becomes complex in relation to riders. The question of ‘who is an employee?’ within the definition of Labour Act 2017 becomes important because the Labour Act prescribes for certain social security measures for any person who is deemed an employee. In the context of riders registered under the ride sharing platforms, they are found to have no legal contractual basis.

For instance: there is no practice of any employment contract/agreement between the platforms and the riders. It is so because their nature of work classifies them as an independent contractor/consultant with zero access to security and recognition under the labour laws of Nepal. While several industries and sectors of enterprises in Nepal which are already within the ambit of legal recognition, are still required to shape and hone their initiatives to attract women employees and empower women’s participation in sector of business and economy, the non-recognized informal sectors like gig economy, especially the ride sharing platforms have a long legal and social battle to witness before seeing the number of women participation both as customers and riders in the ride sharing platforms.

Initiatives for Creating Gender-Friendly Ride-Sharing Platforms

This article reveals that ride-sharing platforms in Kathmandu (*Pathao, Tootle, Indrive, Yango*) reproduce a deeply gender-segregated labour pattern. Women riders are nearly absent, while man riders dominate all platforms. Women customers are disproportionately high, demonstrating reliance on ride-sharing but hesitation to participate as service providers. The limited women participation is rooted in patriarchal norms, stigma around women in mobility-based work, and cultural constructions of motorcycles as masculine symbols of public mobility.

Despite the assumption of online neutrality, platform interfaces reflect binary gender design, allowing only “man” or “women” categories and failing to acknowledge ‘other’ or Gender and Sexual Minorities identities recognized in Nepal’s Constitution. Riders often prioritize women customers, creating gendered market behavior—initially beneficial for the safety of women but simultaneously encouraging sexist attitudes and objectification. Gender-based safety preferences, allowing women to request women riders when available must be introduced. The government should make a policy to ensure that the riding-sharing platforms are gender-friendly, riders are gender-sensitive, and all people regardless of gender identity feel comfortable while using ride-sharing services.

Most of the riding-sharing platforms don’t provide orientation training. Even with platform training modules (e.g., *Pathao’s* onboarding focusing on harassment prevention), the study shows that the harassment incidents remain common in Nepal. Many riders demonstrate undertones of sexism, describing women passengers as “fun” or preferable. Moreover, the competing platforms (*Pathao, Indrive, Yango, and JumJum*) do not provide effective gender-sensitivity training, weakening industry-wide safety norms. The platform must have a policy to provide training to the riders on gender-based violence and social discrimination. It is their responsibility to ensure every rider user feels comfortable while using the rider service.

The legal environment governing ride-sharing is fragmented. While the federal law still prohibits private vehicles for public transport the provincial laws (Bagmati, Gandaki) allow ride-sharing. The Court rulings have called for federal reforms but ambiguity persists. Moreover, the Riders are still not legally recognized as employees, leaving them outside the protections of the Labour Act (e.g., social security, insurance, workplace safeguards). This legal ambiguity disproportionately harms women, who already face mobility risks and workplace insecurity. The federal government

must take initiatives to resolve this problem that prevails in the ride-sharing platforms and services.

Platform's gendered marketing strategies such as by highlighting women riders to attract women customers, but fail to significantly increase real women participation. Some platforms (e.g., Tootle) waived commissions for women riders, but this did not overcome broader structural barriers. The competition among platforms leads to lower compliance standards, where more relaxed onboarding (e.g., *Indrive*, *Yango*) becomes attractive to riders—ultimately weakening uniform gender-sensitivity protocols.

Conclusion

The gig economy in Nepal represents both a promise and a paradox. While digital platforms such as Tootle, *Pathao*, *Indrive*, and *Yango* have expanded mobility and economic opportunities, they also reproduce the deeply entrenched gender hierarchies that shape Nepali society. This article analyzed that gender is performed and negotiated not only through cultural expectations but also through the technological interfaces that mediate everyday labour.

Women's limited participation as riders, their overrepresentation as customers, and the persistence of harassment reveal that the gig economy is far from gender-neutral. Instead, it operates within a patriarchal structure that defines mobility, safety, and visibility as masculine privileges. Moreover, the lack of comprehensive legal recognition of gig workers leaves both man and women participants vulnerable to insecurity and exploitation, with women disproportionately affected.

Therefore, gender inclusivity in the gig economy requires more than digital access—it demands systemic reforms that integrate labour protections, digital rights, and gender-sensitive design. The government must prioritize the amendment of outdated transport and labour laws, while platforms must move beyond token gestures to genuinely reconfigure their employment models and safety mechanisms.

Ultimately, the future of Nepal's gig economy depends on whether technological innovation can be harnessed not merely for economic efficiency, but for social justice and gender equity. Only when digital labour becomes inclusive, accountable, and legally safeguarded can the gig economy truly become a transformative space for Nepali women.

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Breaking the Cycle: Analyzing Nepal's Criminal Approach to Menstrual Discrimination

Purnima Chand*

Abstract

In Nepal, menstrual discrimination and restrictions persist. A large number of restrictive practices, particularly Chhaupadi, continue to be observed. These lead to the isolation of women based on the notions of impurity. In response, the Criminal Code of 2017 made these practices illegal. However, 8 years later, there are still restrictions in urban as well as rural areas. The study indicates that culture overrides legal provisions. The findings from 131 respondents reveal that more than 70 percent of women still experience menstrual restrictions, and the majority remain unaware of the legal provisions available to them. The critical role of the awareness campaigns, leadership, and community advocacy is reflected in a comparative analysis of two villages in Sudurpaschim Province. Sustainable change requires long-term social transformation. The paper concludes that criminalization and short-term interventions alone are insufficient, as eliminating menstrual discrimination in Nepal requires profound social change.

Keywords: *Menstruation, criminalization, chhaupadi, taboos, advocacy, awareness, cultural practices, criminal code 2017, human rights.*

Chhaupadi: Myth, Taboo and Practices

Menstruation is a natural biological process experienced by women and girls. Nonetheless, in Nepal, menstruation is still surrounded by myths, taboos, and restrictive practices that have persisted across generations. Of these long-held practices, *Chhaupadi* is considered one of the worst and most regressive customs. This tradition deems women and girls during menstruation to be impure, requiring them to live in sheds and closed spaces in remote locations without access to basic facilities. Not only does this practice infringe upon their rights and dignity, but it also endangers their health and well-being. Various organizations have launched awareness-raising campaigns to challenge *Chhaupadi* and its harmful customs because of the severe physical and psychological impact on women and adolescent girls. However, strong legal backing came only in 2017, when the Criminal Code-2017 formally criminalized this inhuman practice.

Regardless of this law, the practice of *Chhaupadi* continues to exist in rural and remote areas of Nepal, where cultural norms often prevail over legal prohibitions. The fact that *Chhaupadi* is still practiced even though it is declared a crime underscores the disparity between the law and reality. Although criminalization represents a significant step toward reform, menstrual discrimination persists, raising an important question about whether law alone can abolish harmful practices rooted in cultural beliefs. While legal measures have been introduced to address menstrual discrimination, it continues to prevail in society. This persistence reflects deeply entrenched cultural attitudes and weak enforcement of existing legal provisions.

The distance between legal provisions and the realities of Nepalese society regarding harmful practices raises the question of whether criminalization is an effective means of solution. The primary goal of the research is to examine the implementation of the legal provisions related to menstrual discrimination and to assess whether they have brought meaningful change within Nepalese society.

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Menstrual discrimination is a common phenomenon in rural areas in Nepal. Among them, *Chhaupadi* is considered to be one of the most harmful and entrenched practices. Scholars have studied this practice, which forces women to stay in secluded and isolated places as they are considered impure during their menstrual cycle. Studies highlight how cultural taboos perpetuate practices rooted in gender-based discrimination. The study highlights that the practice is both a cultural and a human rights issue (Thakuri, et al, 2021).

Likewise, there are significant health consequences of such practices (S. Kadariya and Aro 2015). The health risk of *Chhaupadi* is not a secret. Scholars indicate that the risks of isolation in unsanitary and unhygienic sheds include infection, hypothermia, malnutrition, animal attacks, or death. Besides physical threats, researchers claim that *Chhaupadi* threatens psychological well-being, dignity, and belonging, constituting a violation of women's fundamental rights to equality and health. It has also been identified that the respondents were not permitted to engage in religious practices, and 80 percent had no permission to touch other animals, people, or plants (Amatya et al, 2018). Many other scholars and experts have also reported the same restrictions on cleaning, cooking, eating and drinking, touching, worshipping, sleeping, and social distancing (Parajuli, et al 2019, and Bam 2020). More so, scholars also discovered that the scope of restrictions was less restrictive or more restrictive depending on caste and ethnicity (Baumann et al, 2021).

The legal reaction of Nepal to *Chhaupadi* has developed throughout the years with changes in legal provisions. The case of *Dil Bahadur Bishwakarma vs. the Government of Nepal* is considered a milestone in Nepalese menstrual discrimination law. A directive was issued by the Government of Nepal to eliminate *Chhaupadi* as a harmful cultural practice. Thereafter, the Government incorporated the *Chhaupadi* Elimination Directive, 2008 Supreme Court, 2005). But, as scholars like posit, the directive was not enforceable (Joshi, 2022).

Non-binding directives, such as these initial policy interventions, showed their weakness in spite of *Chhaupadi* being practiced. After realizing this gap, a step in the right direction was taken by the Government of Nepal, which began to criminalize the practice. The state officially banned the act of compelling women and girls into menstrual exile by amending the Criminal Code of Nepal, 2017. The legislation came with some fines and jail terms for those who force women to abide by *Chhaupadi*. This change of policy guidelines into criminalization of *Chhaupadi* was a notable advancement in how Nepal addresses it through the law, as recognition of *Chhaupadi* as an offense against the dignity of women, their health, and basic rights grew. Nonetheless, this legal advancement is not without its own issues of enforcement and entrenched socio-cultural ideals that are still going on to impede the total elimination of the practice.

This turning point came through the criminalization of *Chhaupadi* by means of the Criminal Code Act, 2017. Legal scholars have hailed this as a step in the right direction, although they also warn that criminalization alone might not be sufficient to change entrenched cultural practices. A common thread in the literature is the laxity of the application of anti-*Chhaupadi* laws. Low rates of prosecution and persistence in rural regions are indicated in human rights reports. Among the fundamental barriers cited by scholars are: lack of awareness about the law, fear of social backlash preventing reporting, and weak capacity of law enforcement. Thus, scholars caution that the danger of criminalization without adequate community-based education is that harmful practices may continue secretly rather than being eliminated, as seen in Nepal. This article focuses on understanding menstrual discrimination in Nepali society, legal provisions, practical experiences, and challenges in implementing legal provisions.

Menstrual Discrimination: An Inhuman Practice

Menstruation has long been surrounded by myths and taboos. In many cultures, it is often associated with negativity due to religious and cultural beliefs that regard it as impure. *Manusmriti*, the Old Testament, and Torah texts taught that menstruating women were unclean, and therefore not allowed to participate in rituals, kitchens, and communal

life, and more positive indigenous beliefs that venerated menstruation were overshadowed (Joshi, 2022). In South Asia and Nepal, Hindu culture had a massive impact on menstrual taboos, and *Chhaupadi* became the most pernicious practice (Robinson, 2015). *Chhaupadi* is practiced mainly in western Nepal, as it requires women and girls to reside in sheds, and forbids them to touch food, water, or household belongings (Joshi, 2022). Although the Supreme Court ordered the abolition of the practice in 2005 and criminalized the practice in the Criminal Code of 2017, *Chhaupadi* continues due to social pressure and cultural resistance, elongating the suffering of women and girls who are subjected to these practices.

The NDHS 2011 revealed that of the top ten SRH issues of concern identified by teenage girls, seven were menstruation-related. Every day, approximately 237,250 women menstruate in Nepal; it has been reported that over 89 percent of women in Nepal experience some form of restriction and exclusion during menstruation. One of the most extreme forms of menstrual seclusion practice in Nepal is Chhaupadi. Strongholds of Chhaupadi culture exist in the far western districts of Nepal, including Achham, Dailekh, Bajhang, Bajura, and Doti. However, the practice persists throughout the country. 71.2 percent of girls and women stay in Chhaupadi during menstruation in the Midwestern and 15.5 percent in the Far Western (UNICEF, 2014).

These limitations bear serious social impact, affecting the education of girls, the exclusion of women in family and community undertakings, and strengthening gender inequality. They cause long-term damage, psychologically, by creating shame, fear, and trauma, especially in unsafe sheds (Thakuri et al., 2021). In human rights terms, menstrual discrimination contravenes the commitments of Nepal between CEDAW and ICESCR, which bind states to eradicate harmful practices. *Chhaupadi* has been recognized as a violation of dignity and equality by UN bodies, such as UNFPA and OHCHR, which stress that legal measures must be supported by community awareness and participation (OHCHR, 2020).

Constitutional and Legal Provisions

The Constitution of Nepal 2015 ensures equality and the absence of discrimination based on sex, caste, and social practices, making menstrual discrimination a constitutional concern. Articles 18 and 38 guarantee women their rights to equality and dignity, while Article 51 instructs the state to abolish the traditional practices that damage the health and status of women. Stemming from this, the Criminal Code Act, 2017 specifically criminalized Chhaupadi as well as any other form of such practice in Section 168(1), which prescribes punishment to those who compel women to seclude themselves during menstruation (Muluki Criminal Code, 2074). This marked a major milestone in converting menstrual discrimination from a cultural concern to a criminal offense. In the courts, judicially, *Dil Bahadur Bishwakarma vs. The Government of Nepal* was a landmark case in 2005, where the Government of Nepal identified the practice as violating women's fundamental rights. Nevertheless, the norms of the community are still strong, and court orders and laws are hard to enforce. Comparative views indicate that India and Bangladesh outlaw discriminatory acts by incorporating equality provisions in their constitutions, but they have no criminal law against menstrual taboos (Castro, 2025).

Nepal ratified CEDAW in 1991, committing itself to eliminating all forms of discrimination imposed against women. Article 2 of CEDAW obligates the signatories to take appropriate measures against harmful practices and customs that perpetuate inequality against women. Likewise, Article 12 of the convention requires access to dignified and safe menstrual health and hygiene. CEDAW's General Recommendation No. 19 (1992) and No. 35 (2017) have also advised that harmful practices that are associated with menstruation are considered to be gender based violence and discrimination, thus should not be practiced. Nepal ratified the ICESCR in 1991, where Article 12 recognizes the right to attain a proper standard of physical and mental health, and Article 13 protects the right to education. Along

with that, the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights emphasizes that states must ensure access to health without discrimination and address harmful traditional practices.

In certain rural regions in India, especially in states such as Madhya Pradesh and Odisha, menstruating women are not allowed to go to the kitchen, touch food, or even perform religious rituals. They are usually not sent to separate huts, but often isolated in a certain room or part of the house. India does not have a detailed, countrywide legislation on menstrual discrimination. Rather, its efforts are an ad hoc collection of state initiatives and voluntary corporate Programmes. It is mostly concerned with the issue of menstrual health and hygiene, as well as the issue of workplace or educational accommodation. The Sabarimala Temple case can be taken as an example of India's judicial approach in tackling menstrual discrimination. The case of the State of Kerala or the Sabarimala case is very relevant. The majority ruling of the Supreme Court stated that the prohibition of women of reproductive age against entering the Sabarimala temple was discriminatory and a denial of their constitutional rights, among other rights that included the rights to worship and freedom against discrimination based on sex. The judgment set a major precedent regarding menstruation-related discrimination in India.

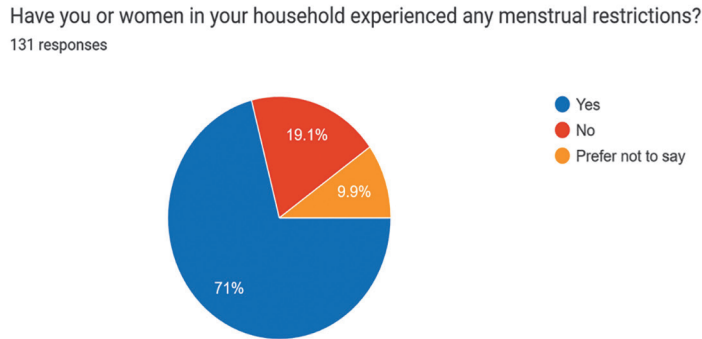
Bashali is a special menstrual ritual of the Kalasha people of Pakistan, in which women are obliged to stay in a different house during their periods. This is an essential aspect of their cultural and religious identity to the Kalasha, whose religion draws the distinction between the realms of the pure and the impure (Ali, 2020). Though a kind of seclusion, other anthropologists and even the Kalasha women themselves perceive it as a freedom and a rest. The Bashali acts as a collective gathering wherein the women are not required to do their everyday chores and domestic responsibilities, and get a rest after a busy day (Ubaid, 2025). The Pakistani government has never prosecuted such a practice, reflecting non-intervention in protected minority customs. This contrasts with countries that legally prohibit similar practices.

Experiences of Menstrual Discrimination in Modern Day

A survey was conducted among a total of 131 respondents to understand the ground realities, perceptions, and challenges of menstrual discrimination against women and girls in Nepal. The demographic data of the survey shows that the majority of the respondents were between the ages of 18-25 (59.2 percent), then those aged 26-35 years (23.1 percent), and a very small percentage were in the 13-17 years and above 50 years age groups (11.5 percent and 3 percent respectively). Thus, the survey largely reflects young adult perspectives.

More than 50 percent of respondents were employed, and 25.4 percent identified as students, while the remaining individuals were either self-employed or homemakers. When asked about the necessity of menstrual restrictions in society, 66.7 percent of respondents answered that they were not necessary, while 33.3 percent considered them necessary based on religious and cultural values.

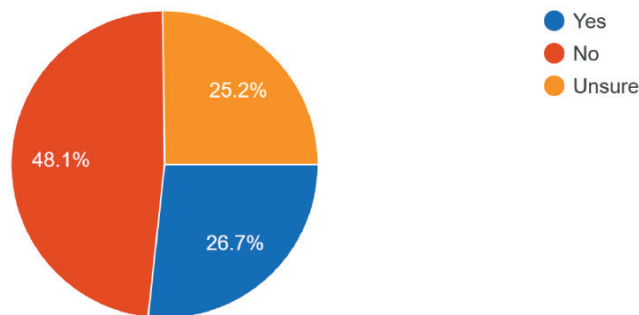
Figure 1: Status of Household Experience on Menstrual Restrictions



The survey also revealed that 71 percent of women reported experiencing, either personally or within their households, menstrual restrictions or discrimination. Only 19.1 percent of people reported no such restrictions. Among those affected, the most common forms were religious prohibitions and isolation in a *Chhau Goth* or separate room, followed by restrictions on entering the kitchen and touching food, water, or plants.

Figure 2: Perception of Menstrual Restriction

Do you personally agree with the practice of menstrual restrictions?
131 responses

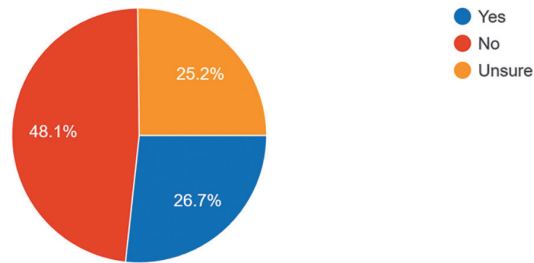


These findings help to highlight that menstrual discrimination is not simply limited to the practice of Chhaupadi but exists in different forms in everyday household practices. While 48.1 percent of the respondents disagreed with the practice, 25.2 percent did not express strong opposition. 26.7 percent of the respondents were unsure about the practice, reflecting the cultural pressure and uncertainty that exists within people, even in the present time. The survey also revealed limited legal awareness: only 42.1 percent of respondents were aware of the criminalization of menstrual restriction in Nepal, whereas 38.2 percent were unaware of such provisions.

Figure 3: Legal awareness against Menstrual Discrimination

Do you personally agree with the practice of menstrual restrictions?

131 responses

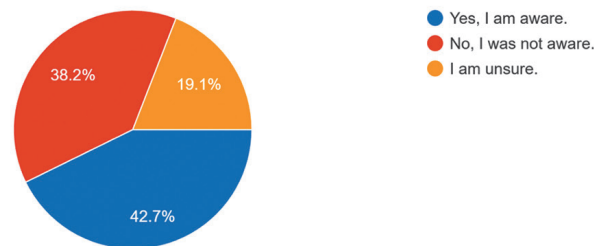


Likewise, 43.5 percent of the respondents stated that they had not seen any awareness Programmes or initiatives regarding legal provisions in their community. This suggests inadequate dissemination of information at both the community and state levels.

Figure 4: Status of Participating Awareness Campaign against Menstrual Discrimination

Are you aware that forcing someone to follow menstrual restrictions is a criminal offence in Nepal?

131 responses

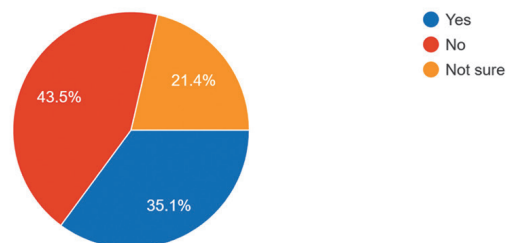


Finally, when asked about the effectiveness of criminalizing menstrual discrimination, the respondents had mixed answers, with 28.2 percent considering it effective, 24.4 percent believing it helps to some extent, 25.2 percent felt it does not help, and 22.1 percent were unsure. These findings suggest that the law alone is sufficient to eliminate menstrual discrimination.

Figure 5: Perception of Criminalization of Menstrual Discrimination

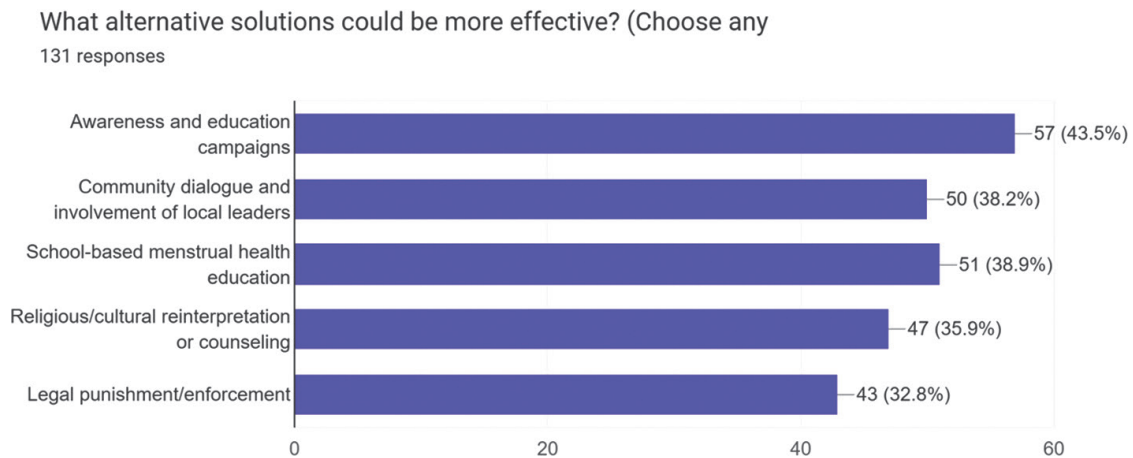
Have you ever seen any awareness programs about this law in your community?

131 responses



When asked about alternative solutions that could be more effective, more than 50 percent of respondents believed that awareness and education campaigns, community dialogue, and the involvement of local leaders, as well as school-based menstrual health education, would be more effective in addressing the problem.

Figure 6: Perception of an Alternative Solution to End Menstrual Discrimination



Resistance for Dignified Menstruation

The results of the survey reveal that menstrual discrimination, such as Chhaupadi, is a complicated issue that has been integrated into Nepalese society. Nepalese society has a complex connection between tradition, religion, individual decision, and legislation in the area of menstrual discrimination and prohibition. Most of the survey participants are between the ages of 18-25 years and personally feel that they do not necessarily have menstrual restrictions as part of their religion and culture. Nevertheless, these beliefs do not reduce the prevalence of such practices within households, as they remain widespread. Over 71 percent of the respondents said that they had encountered the retrogressive act of menstrual restriction being implemented either at their home or in their community. This reflects the disparity between personal beliefs and social conformity, as individuals tend to engage in restrictive practices due to societal pressure. The survey indicates that menstrual restrictions are not only severe practices, such as Chhaupadi, but also are done in ordinary practices. Even though they are not so extreme, restrictions like not allowing entry to the kitchen, attending religious activities, contact with men, and going to work or school are common and accepted in society. Such normalized restrictions reinforce the idea of menstruation as dirty and pose a significant obstacle to transforming traditional norms. Because these practices are embedded in daily life, menstrual discrimination remains difficult to overcome. The results also bring to light the general ignorance of the law in relation to criminalizing menstrual discrimination, despite these laws being in place for over 8 years. The majority of respondents are unaware of these legal safeguards, which harm their effectiveness. Laws alone cannot solve the problem, especially without public awareness. This indicates that legislation is not in line with the required social or institutional work to guarantee compliance and knowledge among the populace.

The majority of subjects who have experienced menstrual limitations do not feel that legal actions alone significantly reduce discrimination. Criminalization is a positive move, but successful change requires implementation and dealing with the cultural and societal beliefs that underlie the practices. Eliminating menstrual discrimination is difficult since it has entrenched itself in complicated social and religious processes, not only legal systems. Violations of rights are acknowledged by law, whereas the actual change is impossible without improving the social conventions that promote discrimination.

Comparative Case Study

A comparative study of two rural villages in Sudurpaschim province helps to support the empirical findings. Swamikartik Rural Municipality of Bajura District became Chhaupadi-free in 2015, which is way before legal provisions were introduced. As of 2021, this municipality has a literacy rate of 67.2 percent, with literacy rates of 75.9 percent for males and 59.2 percent for females (Census, 2021). Despite relatively low literacy, menstrual taboos are not practiced in the village. The awareness campaigns, which have been incorporated into the local government role as well as the campaigns organized by local NGOs and women, have been at the center of eliminating Chhaupadi in this village. This has contributed to the understanding of menstruation as a normal biological process, which has caused a change in the cultural values and the rejection of the practices that are limiting to the village at large.

In contrast, Krishnapur Municipality in Kanchanpur continues to face issues concerning the extreme menstrual restrictions. In July 2025, a woman, aged 28, succumbed to the snake bite when she was staying in a Chhau Goth (Bhatta, 2025). The literacy rate in this municipality stands at 77.3, with 85.2 for men and 70.4 among the female population (Census, 2021). Minimal external intervention or education has been done to help in tackling the issue of menstrual restriction, and only short-term solutions of the local authorities, like destroying *Chhau Goths*, as opposed to long-term solutions like awareness and educational campaigns, are executed. The continuity of the practice and the lack of willingness to alter the existing traditions imply that when communities cannot alter their perception, detrimental traditional practices remain and tend to override legal rules.

Collectively, this comparative analysis of the two villages in Sudurpaschim province contributes to supporting the major findings of the survey. The above illustrations show that criminalizing the practice is not going to push the restrictive menstrual practices out of society, but approaches that focus on the community, such as awareness, dialogue, and cultural involvement, can create a more lasting change in society.

Conclusion

Menstruation is still viewed as taboo in Nepalese society. It is considered a sign of impurity, and women who are menstruating are considered impure. Because of this, a lot of women have to face menstrual restrictions and discrimination, creating major obstacles in their daily lives. Some of these menstrual practices are extreme, like *Chhaupadi*, which causes social exclusion, harm to physical and mental health, and violation of human rights.

In response to this practice, the Government of Nepal reformed the existing legal mechanism and criminalized practices like *Chhaupadi* under the Criminal Code 2017. It has been eight years since the law was introduced, yet many women still face harsh restrictions while menstruating. Women still lose their lives to snake bites, landslides, and suffocation while living in a *Chhau Goth*. The empirical findings of the research have demonstrated that many women disagree with the restrictive practices, yet have to follow them because of family and societal pressure. The majority of them are unaware of any law or legal provision related to such restrictions, highlighting the gap that exists between the law and its execution.

To further this, a comparative study between two rural villages in Sudurpaschim was conducted, where one village is still plagued by this practice due to a lack of proper intervention, while the other has been able to rise above it because of a correct approach. This success story of a rural village shows that destroying *Chhau Goths* as an attempt to minimize the practice of *Chhaupadi* and imposing legal sanctions against people is not adequate to tackle the problem as complex as menstrual restriction. This problem is highly complicated because of its intersectional nature, so a sustainable change will come only when menstruation is approached as a biological occurrence and is separated from the stigma.

Recommendations to the stakeholders

The analysis of legal provisions, case studies, cultural context, empirical data, and comparative review indicates that criminalization of menstrual restrictions, when influenced by cultural values, can be insufficient to address the problem. Considering these reasons, the following recommendations are proposed for a sustainable change.

Advancement of Community-Based Campaigns: Comparative analysis of two villages in Sudurpaschim province shows that local awareness campaigns can play a significant role in mitigating menstrual restrictions. Such campaigns can be expanded at the grassroots level and can be assisted by local authorities, particularly in rural areas. It can be assisted by trusted community members like leaders, volunteers, and health workers for better integration.

Engagement of Religious and Cultural Leaders: The majority of the restrictions imposed against women during menstruation emerge from religious and cultural beliefs. So, it is beneficial to involve respected religious and cultural figures to advocate for change by challenging these justifications. It can be done by community dialogues and training that can help to reinterpret harmful practices.

Strengthen Menstrual Health Education: Menstruation is a biological and health concern that is backed by science. It should not be made a cultural or religious issue. Empirical data collected for the research have highlighted how many women do not prefer talking about menstruation openly, reinforcing taboos. Thus, academic curriculum and institutional campaigns should strengthen menstrual health education.

Legal Reform: The empirical data show that women hesitate to report the restrictions they are facing, as the majority of women face restrictions through their families. It has also been shown that menstrual restrictions are in different forms, which may not be as harsh as *Chhaupadi*. So, there is a need for modification of legal provisions and establishment of a confidential reporting system.

Awareness Campaign: The majority of the respondents of the survey have mentioned that they are unaware and unsure of the existence of legal provisions regarding menstrual restrictions, even after 8 years of the law being commenced. So, it is extremely important that the government and local authorities coordinate with each other to spread awareness and inform about existing legal provisions regarding menstrual restrictions.

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Elected but Excluded: A Case Study of Dalit Women's in Helambu Rural Municipality

Puspa Khadka*

Abstract

This study examines how Nepal's constitutional commitment to inclusive governance is operationalized in practice for Dalit women elected through the ward-level quota system. Centering on Helambu Rural Municipality, the research investigates whether the legally guaranteed Dalit woman's seat has translated into meaningful opportunities to participate in local decision-making processes. Employing a qualitative case study design, the study draws on in-depth interviews with three Dalit women ward representatives and a review of constitutional provisions, local governance laws, electoral records, and relevant secondary sources. The aim is to assess not only the extent of their participation but also the structural and institutional factors that shape or constrain the exercise of their political agency. The findings show a clear gap between being elected and being empowered. Although the quota system secures their presence in local bodies, Dalit women still face caste-based discrimination, patriarchal expectations, party control, and limited training opportunities. These barriers restrict their ability to influence agendas or exercise leadership, leaving them with largely symbolic roles. The study argues that without stronger institutional support, capacity-building, and genuine inclusion within political parties, the constitutional goal of meaningful representation remains unmet. Transforming Dalit women's political participation from tokenism to real agency requires legal reforms alongside social and structural change.

Keywords: *Structural exclusion, political representation, intersectionality, critical actor theory, local governance, caste and -gender discrimination*

Structural Exclusion of Dalit Women

Nepal's socio-political landscape has long been dominated by the so-called higher-caste *Khas Arya* group resulting in the systemic exclusion of marginalized communities. Among them, Dalits who comprise 13.8 percent of the population (Census 2011) have constantly faced caste-based discrimination and exclusion.

A democratic political system is often viewed as a system based on majority rule. In Nepal, the right to elect representatives was established after the fall of the Rana regime in 1951, marking a step toward inclusive governance. Since then, global and local discourse has emphasized diversity, equality, and equity, and affirmative action measures such as quotas have been introduced to broaden political participation and ensure marginalized groups, especially minority women, are represented in decision-making (Childs & Krook 2008).

Caste systems, as articulated in classical social stratification theory, are rigid, birth-based hierarchies that organize individuals into enduring social classes defines the caste system as a system of birth-ascribed stratification, of socio-cultural pluralism, and of hierarchical interaction (Berreman 1967). Within this framework, Dalits occupy the lowest position and have historically faced systemic exclusion and discrimination.

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Despite the legal abolition of untouchability, caste-based hierarchies remain deeply embedded in the social, economic, and political fabric of South Asian societies. Among Dalits, specifically women experience the most acute forms of marginalization due to the intersection of caste, class, and gender-based oppression (Ambedkar 1936; Guru 1995). Although Dalit women account for roughly 7 percent of Nepal's population, they are still largely excluded from political and government spaces (Central Bureau of Statistics 2012; FWLD 2016). Long-standing inequalities continue to restrict their access to opportunities, rights, and fair representation.

Nepal's 2015 Constitution represents a milestone in this journey toward inclusivity, mandating the participation of women, Dalits, and other marginalized communities at all tiers of government (Constitution of Nepal 2015). A landmark provision requires that each of the 6,742 wards across 753 local bodies elect at least one Dalit woman as a ward member (Local Government Operation Act 2017). This provision, operationalized under the Local Government Operation Act, 2017, entrusts Dalit women representatives with responsibilities such as planning, implementing, and monitoring local development initiatives. In principle, this framework integrates one of the most marginalized groups directly into the state's governance architecture. This research critically examines the experiences and challenges faced by Dalit women elected under Nepal's constitutional quota system, focusing particularly on their participation in local government.

Using feminist intersectionality theory, this study examines how overlapping systems of caste and gender discrimination influence Dalit women's political participation and effectiveness (Crenshaw, 1989). In addition, drawing on the theory of critical actors, it investigates whether their presence in politics leads to meaningful representation or remains largely symbolic.

This article focuses exclusively on locally elected Dalit women from the 2022 local elections in Helambu Rural Municipality and does not cover other levels of government or political positions. It also examines only Dalit women elected under the quota system. Accessing Dalit women who were unsuccessful in elections or did not contest was difficult, reducing understanding of broader participation barriers. Frequent changes in Nepal's government, party alliances, and local governance structures are affecting access to key leaders and up-to-date political dynamics.

Interviews were conducted with only three Dalit women representatives, limiting the scope of the findings. The study relies on secondary sources, including Election Commission reports (Election Commission, Nepal 2022), media articles, and grey literature, with limited data on training, mentorship, election results, and executive roles. To mitigate these limitations, constitutional and legal provisions, as well as relevant literature, were reviewed to provide additional context regarding Dalit women's political participation and structural challenges.

This article uses a qualitative approach to explore the experiences of Dalit women ward representatives in Helambu Rural Municipality. Primary data was collected through in-depth interviews with three elected Dalit women Manju Nepali, Sita Sunar, and Kamala Nepali focusing on their political participation, agency, and barriers faced. Secondary data included the Constitution of Nepal, 2015, Local Governance Act, 2017, Election Commission reports, and relevant media and election reports. Interview data was analyzed thematically and narratively to identify patterns in empowerment, structural constraints, and opportunities, situating individual experiences within broader institutional and social contexts.

Political quota systems have improved women's numerical presence in political institutions, strengthening descriptive representation, but their transformative potential remains limited by party control, patriarchal structures, and unequal power relations (Childs & Krook 2008). Building on this, Punam Yadav's study on Nepalese women in politics, grounded in Bourdieu's theory of capital, offers a more nuanced perspective (Yadav 2024; Bourdieu 1986). Yadav finds that quotas can enhance women's political capital by increasing their social visibility and legitimacy, particularly

for those without prior political backgrounds. This shift helps normalize women's participation in political spaces traditionally dominated by men.

However, Yadav also warns that while these new subject positions bring power and prestige, transformative change remains constrained. The authority granted by quotas often remains symbolic when party gatekeeping and patriarchal cultures limit decision-making power and genuine influence.

This contrast between descriptive representation (presence and visibility) and substantive representation (actual agency and impact) highlights the need to assess quotas not only by the number of women elected but by the extent of their influence in shaping policy. Within the context of Critical Actor Theory and intersectional feminism, the central question becomes whether Dalit women who face both caste and gender-based oppression can move beyond token representation to challenge systemic inequalities and promote genuine policy transformation.

Empirical studies show that Dalit women's political participation in Nepal cannot be understood through a single lens. They face dual layers of exclusion, caste-based stigma and patriarchal marginalization that reinforce one another. Intersectionality, as defined by Crenshaw (1991), provides a critical framework for understanding how overlapping systems of oppression shape Dalit women's experiences differently from those of upper-caste women or Dalit men (Rege 1998; Guru 1995).

In practice, these intersecting barriers manifest as limited access to leadership roles, token participation through quota systems, and systematic sidelining in decision-making spaces (Upadhyay 2023; Adhikari 2025). Upadhyay notes that patriarchal norms and caste hierarchies work together to keep Dalit women confined to symbolic positions, while Adhikari finds that even where Dalit women hold elected posts, they often lack real authority in local governance. These intersecting oppressions have "multiplicative effects", meaning that caste and gender inequalities reinforce each other to deepen exclusion (Hancock 2007).

Overall, the literature emphasizes that Dalit women's political marginalization cannot be explained by gender or caste alone. Their exclusion stems from the intersection of both, creating distinct challenges necessitating an intersectional approach to understand and address their political realities.

Khatri and Paudel's study on women's political representation in Gandaki Province reveals a stark gap between descriptive and substantive participation (Khatri & Paudel 2025). While quotas have increased women's numbers in local government, genuine influence remains limited, with Dalit women particularly affected. Social norms, patriarchal expectations, and party-controlled systems often restrict them to symbolic roles without real decision-making power.

This research underscores the persistence of intersectional marginalization in political practice: caste and gender intersect to restrict Dalit women's access to leadership roles, policy influence, and substantive political engagement. The study aligns with broader scholarship on political quotas, which cautions that increasing numbers alone does not guarantee empowerment or the ability to challenge structural inequalities (Childs & Krook 2008; Yadav 2024).

By situating Dalit women's experiences within the lived realities of local governance, Khatri and Paudel provide critical empirical evidence that highlights the gap between legal mandates for inclusion and the practical limitations imposed by social hierarchies and institutional gatekeeping.

Mandatory Representation of Dalit Women at the Ward Level

Nepal's 2015 Constitution and the Local Government Operation Act (2017) enshrine legal mechanisms to enhance the representation of marginalized groups, including Dalit women. Specifically, each ward is mandated to elect at least

one Dalit woman, a provision that is both innovative and globally distinctive (Ghimire 2023, Constitution of Nepal 2015), local Government Operation Act, 2017 Section 6(2). These constitutional and statutory mandates aim to bridge historical inequalities by guaranteeing descriptive representation for Dalit women in local governance, ensuring their presence in decision-making bodies where they were previously absent.

While the mandates represent a bold step toward inclusive governance, empirical evidence suggests that numerical representation does not automatically translate into substantive political power. Dalit women, though elected under these provisions, often remain marginalized in leadership roles such as ward chairperson or mayor, highlighting the persistence of structural barriers including caste hierarchies, patriarchal norms, and party gatekeeping that limit their agency in local governance.

Thus, Nepal's institutional framework provides a legal foundation for Dalit women's inclusion, but the effectiveness of these mandates in promoting actual empowerment requires careful examination of the socio-political realities that shape participation.

Despite the constitutional and legal mandates, practical implementation has faced significant challenges. In the 2017 local elections, 175 Dalit women seats remained vacant, and in 2022, 123 seats went unfilled, highlighting party reluctance, limited candidate availability, and entrenched discriminatory attitudes that continue to constrain Dalit women's political participation (Kathmandu Post 2022). These gaps indicate that legal provisions alone are insufficient to guarantee effective inclusion and underscore the persistent influence of social norms and institutional gatekeeping.

Intersectionality explains how overlapping systems of caste, gender, and class create compounded exclusion. Rather than viewing these as separate forms of inequality, it highlights how they interact to shape access to opportunity and power (Guru 1995; Collins 2000; Kabeer 2005). It situates their struggles within broader social structures that determine who has access to resources, networks, and legitimacy.

Research demonstrates that interventions targeting either gender inequality or caste discrimination in isolation are insufficient; the intersecting nature of these hierarchies perpetuates political, social, and economic disadvantages (Dhobi, 2024).

Challenges faced by the Dalit Women Ward Member

Guru (2012) extends the discussion of political representation beyond mere numerical presence to emphasize agency and influence. He argues that genuine political inclusion requires representatives to possess the power, networks, and institutional access necessary to shape decisions, rather than simply occupying seats. Without these capacities, quota systems risk producing tokenistic representation, in which marginalized individuals are visible but lack real authority (Guru 2012; Phillips 1995).

In the context of Nepal, this framework is essential to understanding Dalit women limited political impact. Genuine empowerment depends not only on election to office but also on the capacity to mobilize support, challenge institutional barriers, and act as change agents within governance structures. By applying the Critical Actor lens, this study assesses whether Dalit women's representation translates into substantive influence or remains largely symbolic.

An in-depth interview with three Dalit women ward representatives: Manju Nepali (Ward-03), Sita Sunar (Ward-04), and Kamala Nepali (Ward-02) was conducted aiming to understand how Dalit women experience political representation, their ability to exercise agency, and the structural and social barriers affecting their roles.

Kamala Nepali ward member of ward no 2 of Helambu Rural Municipality entered politics largely due to assurances from her political party. She said,

“I have to rush to my field once the interview is done, as it’s harvesting season. I somehow manage to attend meetings, and I often agree with what other members say because I have no time to reflect on what is being discussed. Even though I hold this position, I still have a lot to learn before I can truly lead.”

Despite her willingness to participate, household responsibilities, livelihood pressures, and limited literacy constrain her engagement in local governance. She often refers to the chairperson and other more experienced members, reflecting both the structural and social barriers that limit Dalit women’s substantive participation. Most community members approach the ward chairperson rather than her for complaints, highlighting her limited visibility and influence. Kamala’s experience illustrates the gap between descriptive representation provided by quotas and substantive political participation.

Manju Nepali, ward member of ward no 3 of Helambu Rural Municipality was encouraged by political parties to contest for the ward representative position despite having little prior knowledge of political processes. Now serving her second term, she feels somewhat more informed and confident than during her first term, yet her ability to influence decisions remains limited. She said,

“I attend the meetings and try to participate but I often don’t know what is happening until it is too late. Most people from my community come to the ward chairperson with complaints, and I often feel unsure about how to make my voice heard.”

Like Kamala, she often refers to the chairperson and other more experienced members. She attributes these challenges to her lack of formal education, family background, and insufficient training, which she believes contribute to her perceived backwardness in navigating political processes. Despite her willingness to engage, Manju's role largely remains procedural, illustrating the gap between descriptive representation guaranteed by quotas and meaningful substantive participation. Her experience highlights how intersectional disadvantages of caste, gender, economic status, and limited literacy constrain Dalit women’s ability to exercise agency, even when formally elected.

Sita Sunar, ward member of ward no 4 a mother of three with prior community involvement and a small business, actively engages in local governance and was elected through the quota system. She said,

“Working in the ward has taught me how to speak up and advocate for my community. Securing more votes than the ward chairperson, even while going against my in-laws’ preference, has given me confidence to work. I believe that with learning and determination, one can always find a way to achieve their goals. Now I aim to participate in the next election for a higher position.”

Sita raises issues such as irrigation, sanitation, and youth employment, and she challenges party norms when necessary. Despite these successes, she highlighted structural gaps, including delayed meeting notifications, lack of formal leadership training, and limited institutional mentorship. While quotas enabled her entry, her experience demonstrates that meaningful empowerment depends on individual agency, social experience, and access to resources. Sita’s strong electoral support and proactive engagement reflect her potential to act as a critical actor within local governance and her aspirations to contest higher office indicate her forward-looking approach to political leadership.

Although Dalit women have achieved meaningful descriptive representation due to quotas, observations support Dahlerup’s critique that numbers alone do not equal influence (Dahlerup 2006). Helambu’s Dalit women representatives form part of the mandated “critical mass.” They lack political training, not included in agenda-setting,

their voices are often overshadowed, and parties use them primarily to fulfill constitutional inclusion obligations. All three women expressed the need for training, orientation, and mentorship, areas that remain largely absent in local governance. This gap is consistent with national findings on Dalit women’s political under-preparedness (Adhikari, Khatri & Poudel 2020).

Across all cases, lack of training, mentorship, and institutional support shows that quotas alone cannot ensure real political agency. Empowerment is uneven and context-dependent, highlighting the need for targeted interventions to turn formal inclusion into meaningful leadership and policy influence.

Figure 1: Dalit Representation in Nepal’s Major Policy Making Bodies (Electoral Result 2022)

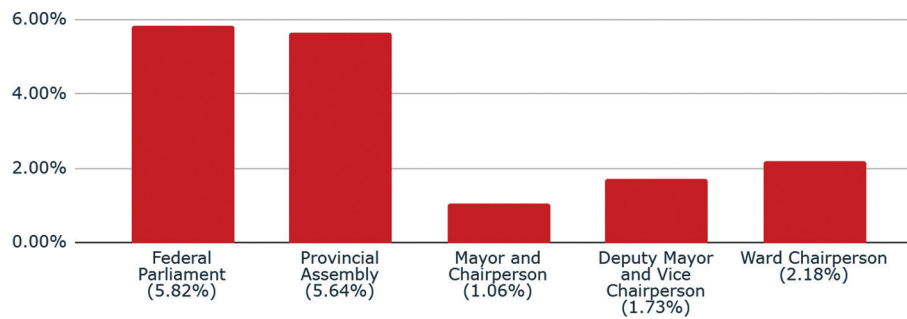


Figure 1 illustrates the extent of Dalit representation across Nepal’s major policy-making institutions, revealing significant disparities between levels of governance and types of political authority. The data show that Dalits constitute 5.82 percent of the Federal Parliament and 5.64 percent of Provincial Assemblies, figures that indicate a degree of formal inclusion within the country’s legislative structures. This gap highlights the urgent need for stronger measures to promote meaningful Dalit participation in higher levels of governance.

Beyond ward-level positions, Dalits hold very few executive roles in the 2022 local elections. Only 1.06 percent of mayors and chairpersons, 1.73 percent of deputy mayors and vice-chairpersons, and 2.18 percent of ward chairpersons come from the Dalit community. This persistent underrepresentation is largely due to political parties’ hesitation to nominate Dalit candidates, often justified by claims of a shortage of “qualified” individuals, an explanation widely criticized as reflecting deep-seated caste biases (Pradhan 2022).

In 2022, Nepal elected 6,853 Dalit women to local government positions, making 21.99 percent of the 7,718 Dalit representatives across 753 local governments. However, this legal mandate ensures Dalit women are elected but rarely allows them to exercise real power (Election Commission, Nepal 2022; Adhikari, 2020).

Figure 2: Representation of Dalit Men and Women in Local Governance (Electoral Result 2022)

Position Level	Male	Female	Total	Percentage
Mayor and Chairpersons	8	0	8	1.06% percent
Deputy Mayor and Vice Chairpersons	2	11	13	1.73% percent
Ward Chairperson	145	2	147	2.18% percent

Data shows that across 753 local governments, not a single Dalit woman is Mayor or Chairperson, and only 13 hold positions where they can make decisions, the rest fill mandatory seats with little influence. For Dalit men, the representation is discouraging but shows at least some breakthrough into decision-making roles. Dalit men have slightly entered decision-making roles, whereas For Dalit women, that door remains firmly shut at the highest levels.

Limited Power for Dalit Women's Representative

Article 6(2) of the Local Level Election Act, 2017 requires each ward to elect two female members, one of whom must be from the Dalit community. Across Nepal's 753 local governments, this provision created 6,743 reserved seats for Dalit women. While intended to promote inclusion, these quotas often function more as a compliance mechanism than a tool for empowerment, as political parties largely filled the seats to meet legal requirements rather than actively promoting Dalit women. In the 2022 local elections, Nepal's leading political parties nominated Dalit women as follows: CPN-UML (6,185), Nepali Congress (5,809), Maoist Center (4,170), Janata Samajwadi Party (1,486), and Rastriya Prajatantra Party (1,662). Despite this, the Election Commission reported that 123 reserved seats remained vacant.

Of those elected under the quota system, the actual numbers per party were: CPN-UML (2,295), Nepali Congress (2,554), Maoist Center (973), Janata Samajwadi Party (296), and CPN-S (180). Even with these figures, Dalit women rarely contested executive positions such as mayor or deputy mayor, highlighting that their presence on paper often remains symbolic and constrained by structural barriers, party priorities, and entrenched gender and caste norms. Looking back at the 2017 elections, reported figures indicate that 6,567 Dalit women were elected while 176 reserved seats remained vacant, though official publicly accessible data on these numbers is limited.

This isn't just about numbers or representation for its own sake. Mayors control local budgets and they decide where money goes. Chairpersons set priorities for their municipalities. Deputy mayors head judicial committees and oversight bodies. These are the positions where you can actually change things for your community. However, historically marginalized Dalits lack meaningful access to and control over positions and decision-making levels, beyond the predefined quotas mandated by the government.

Political parties play a central role in determining who reaches these decision-making positions. By limiting Dalit women largely to quota-mandated seats and rarely promoting them to executive roles, parties effectively decide which voices are included or excluded in governance. As a result, the priorities and concerns of Dalit women such as caste-based discrimination, economic marginalization, and access to resources are often ignored, because those directly affected are systematically kept out of the rooms where agendas are set. Moreover, major Nepalese political parties are dominated by Khas-Arya men, whose control extends beyond candidate selection and electoral outcomes to influence the state's polity, economy and society at large. Dalits are often treated primarily as voters rather than as active party cadres, and opportunities for leadership and decision making are largely denied. For Dalit women in particular, meaningful political power remains largely a mirage, despite the government-mandated quotas intended to ensure inclusion.

Conclusion

Despite constitutional and legal mandates designed to ensure Dalit women's inclusion, this study confirms that political representation in Nepal often remains symbolic. The experiences of Helambu representatives illustrate this vividly: Kamala Nepali's constrained participation due to household responsibilities and limited literacy, and Manju Nepali's procedural engagement highlight how descriptive representation does not automatically confer political agency. In contrast, Sita Sunar's proactive engagement and prior community involvement demonstrate that individual agency, coupled with structural support, can enhance substantive participation.

Electoral quotas have increased Dalit women's visibility; however, few occupy positions of genuine decision-making authority. Legal provisions intended as a floor for inclusion have effectively become a ceiling, fulfilling representational requirements without dismantling entrenched patriarchal and caste hierarchies. Numerical inclusion alone does not

guarantee influence, as social and institutional structures continue to shape political power .

Achieving meaningful empowerment genuinely requires a multi-pronged approach: capacity-building, resource allocation, political party reform, reserved executive positions, and accountability mechanisms. Until Dalit women can occupy mayoral, deputy mayoral, or ward chairperson roles with genuine authority, Nepal's democracy remains incomplete; formally inclusive but substantively constrained. By implementing these recommendations, government institutions, political parties, and civil society can transform numerical representation into real political influence, ensuring Dalit women become active agents of change rather than token participants.

The trajectory of Dalit women in Nepalese politics is promising yet fragile. Targeted interventions, institutional reforms, and social support systems are crucial to shift representation from tokenistic inclusion to genuine leadership. Only then can Nepal fulfill its constitutional promise of inclusive democracy and address the long-standing inequalities in governance.

Recommendations

The findings of this study indicate that Nepal's legal and constitutional frameworks have improved the descriptive representation of Dalit women, yet meaningful political empowerment remains limited. The experiences of Dalit women ward representatives in Helambu i.e. of Kamala Nepali, Manju Nepali, and Sita Sunar demonstrate that quotas alone cannot overcome structural, social, and institutional barriers. Based on these insights, the following recommendations are proposed:

Strengthen capacity-building and leadership development

Many Dalit women enter local political office without prior exposure to political processes, formal training, or experience in governance. This often makes it difficult for them to participate confidently in discussions or influence decisions. To address this gap, regular training Programmes should be organized at the local and provincial levels, focusing on practical areas such as policy-making, budget planning, advocacy, and leadership skills. In addition, mentorship Programmes could be introduced where experienced political leaders guide newly elected Dalit women representatives. Such support would help them better understand institutional procedures, build confidence in public decision-making, and gradually develop the skills needed to play a more active and influential role in governance.

Enhance institutional support and resource allocation

The interviews suggest that many Dalit women at the ward level struggle to participate effectively because they often receive meeting information late or lack the administrative support needed to prepare for discussions. Without access to basic resources and timely communication, their ability to contribute to decision-making becomes limited. Local governments should therefore ensure that all elected representatives, including Dalit women, receive meeting agendas and relevant documents in advance. Providing basic office facilities, logistical assistance, and administrative support would help them engage more actively in governance and make their participation more meaningful.

Reform Political Party Structures and Candidate Selection

Parties must institutionalize proportional representation across all levels from cell committees to central committees, as well as leadership and decision-making bodies, ensuring Dalit women are integrated into committees, central working groups, and nomination processes. Mandatory inclusion of Dalit women in party leadership positions can challenge entrenched patriarchal and caste biases, creating opportunities for them to assume substantive roles and exercise meaningful political influence.

Introduce Reserved Executive Positions for Dalit Women

Data from the 2022 local elections indicate that Dalit women occupy less than 2 percent of mayoral, deputy mayor, and ward chairperson positions. Reserved constituencies or targeted quotas for these higher offices can disrupt structural exclusion and provide Dalit women with real policy influence, addressing the “mandatory seat trap” highlighted by Dignity Initiative (2023).

Establish Monitoring and Accountability Mechanisms:

Electoral outcomes should be evaluated not only by the number of elected representatives but also by the scope of authority and policy impact. The Election Commission should track Dalit women’s participation in executive roles, access to resources, and decision-making influence. Accountability measures should highlight disparities and recommend corrective action to ensure that inclusion translates into substantive participation.

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Law Versus Custom: Honor Killing, Female Foeticide, and Circumcision in South Asia

Rojina Duwadi*

Abstract

This article examines the persistence of three harmful gender-based practices in South Asia; honor killing, female foeticide, and female circumcision—and analyzes the tension between legal frameworks and deeply rooted cultural customs. Despite national laws criminalizing murder, banning sex-selective abortion, and international human rights standards condemning violence against women, these practices continue across countries such as India, Pakistan, Nepal, and other South Asian countries and beyond. The study argues that the core reason for their endurance is not the absence of law, but weak enforcement of those legal provisions, and social acceptance, and patriarchal norms have played a significant role in prioritizing family honor, male preference, and control over women's bodies. It finds that cultural loyalty, secrecy, family collusion, and stigma frequently overpower formal justice systems, allowing perpetrators to evade accountability. As a result, suppression against women rampant across the South Asian societies. The significant gaps and between legal provisions and the practical outcomes of concerning issues are highlighted in this article. It also analyzes the requirement of legislative reform, and more importantly, demands an active engagement of the civil society in creating community awareness, education, empowerment of women, and making the state mechanism accountable to resolve those problems.

Keywords: *Honor killing, female foeticide, and female circumcision, civic engagement, state responsibility, legislative reform, and attitudinal transformation*

Horrible Nature of Gender-Based Violence

South Asia has a strong tradition of family and community life. At the same time, it also carries harmful practices that control women's rights and choices. As a result, women in these countries are compelled to practice, i.e., child marriage, dowry, dress code, discrimination, and stigmatization. Honor Killing, female foeticide, and female circumcision are the major harmful acts that have been continuously practiced in these societies under the cover of culture and tradition. Scholars and reports agree that these harmful practices are deeply rooted in patriarchy and cultural control. Research on honor killings in Pakistan shows that family reputation is often placed above individual life (Human Rights Watch, 2019). Pakistan records hundreds of cases every year, and India also faces recurring incidents. The United Nations General Assembly Resolution 55/66 (2000) called on all states to strengthen responses to crimes committed in the name of honor, yet these killings continue. The South Asian migrant communities also continue such discriminatory practices; for example, a study by the Henry Jackson Society (2015) showed the persistence of these crimes even in the United Kingdom, within South Asian migrant communities.

In the case of female foeticide, official figures in India show an imbalance in sex ratio at birth, with states like Haryana and Punjab having some of the lowest ratios in the country (Reproductive Rights Center, 2024). Despite decades of bans on sex-selective abortion, enforcement has been weak. Studies on female foeticide in India show the link between technology, son preference, and declining female birth ratios (Bhagat & Unisa, 2018). Forced abortion and female foeticide are widespread in India and Nepal. Clinics still offer sex-selective abortions, often hidden from authorities despite the strict prohibition of such acts by law.

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Female circumcision, while banned in many countries, continues in secrecy in South Asia, so those cases are less reported. But studies such as Equality Now's *Asia Report on FGM* (2019) confirm that it exists among the Dawoodi Bohra community in India and in parts of Sri Lanka. Reports by Equality Now (2019) show that girls are often cut at an early age without consent, and the act is seen as a way of controlling sexuality. According to WHO (2024), the health effects include long-term pain, infections, and reproductive health complications.

Honor killings, forced abortion and female foeticide, and female circumcision are being practiced in Pakistan, Afghanistan, India, and even migrated South Asian societies. They are deeply tied to cultural and social beliefs, and they affect women's right to life, choice, health, and dignity. In the case of female foeticide, official figures in India show an imbalance in sex ratio at birth, with states like Haryana and Punjab having some of the lowest ratios in the country (Reproductive Rights Center, 2024). While international law and national frameworks call for their end, these practices remain widespread. Reports by the World Health Organization (WHO, 2024) note that more than 230 million women worldwide have survived female genital mutilation, with South Asia accounting for over 80 million. In India, government data and independent studies show skewed sex ratios caused by selective abortions despite the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 2004 (Reproductive Rights Center, 2024).

The national and international legal framework exists, despite decades of bans on sex-selective abortion; enforcement has been weak. Laws against murder apply to honor killings, but families often shield offenders. India's PCPNDT Act is a strong law on paper, but it suffers from corruption and weak monitoring. For female circumcision, in many South Asian countries, there is no direct law, only general child protection or assault provisions. Even in diaspora communities in the UK, the Henry Jackson Society Report (2015) notes that prosecutions for honor killings or FGM are rare compared to the scale of the problem.

This article focuses on identifying the practices of honor killing, female foeticide, and female circumcision in South Asia, the legal framework, and gaps in implementation. It provides practical suggestions for solutions that can be applied across those countries where such practices are still prevailing. The doctrinal method was used for research and analysis, and mainly, secondary literature was reviewed while writing this article. This article has been divided into five sections; the first section covers the introduction of the topic, including the objective, methodology, and scope of the research. The second section discusses the harmful traditional practices of gender-based violence in South Asian countries, and the national and international legal provisions regarding honor killing, female foeticide, and female circumcision are included in the third section. The fourth section is dedicated to the analysis and discussion of the findings, and the final chapter provides a conclusion and recommendations to the concerned stakeholders.

Honor Killing, Foeticide and Female Circumcision in South Asia

Women in South Asian society have been faced multiple forms of discrimination and violations. Honor killing, female foeticide, and female circumcision are some of the severe violation and discrimination. The status of such violences have been discussed below;

Honor Killing

Honor killing has roots in patriarchal systems where women's behavior is linked to family honor. Historical accounts trace the practice to tribal justice systems in South Asia and the Middle East, where men-controlled women's autonomy through violence (Chesler, 2010). The notion was that any act, such as marrying without consent, seeking divorce, or even dressing "improperly," could stain family honor. Unlike ordinary homicide, honor killing was viewed as justified retribution rather than crime.

Honor killings are prevalent in Pakistan, India, Afghanistan, and Bangladesh. Pakistan reports some of the world's highest numbers, with over 1,000 cases recorded annually by the Human Rights Commission of Pakistan (HRCP, 2022). In India, khap panchayats, a traditional caste-based councils, in northern states like Haryana and Uttar Pradesh have issued orders leading to killings of couples who marry outside caste or religion (Jain, 2020). Afghanistan has seen honor killings rise since the Taliban takeover in 2021, while in Bangladesh, reports remain underdocumented but present in rural areas (UN Women, 2022). Among the South Asian diaspora, honor killings have surfaced in Western countries. Cases in the UK, such as the murder of Banaz Mahmood in 2006, raised public concern (Gill, 2014). In Canada, the Shafia family murders in 2009 highlighted how migrant families may carry harmful practices abroad (Sheehan, 2012)

Pakistan passed the Criminal Law (Amendment) Act, 2016 to close loopholes allowing family pardons, yet prosecutions remain rare (HRCP, 2022). In India, the Supreme Court outlawed khap-sanctioned killings in 2018, but implementation struggles continue. Western governments like the UK introduced "forced marriage units" and protection policies, yet migrant communities sometimes resist legal intervention (Gill, 2014). The persistence of honor killings shows that legal reform without cultural change has limited effect.

Female Foeticide and Forced Abortion

Female foeticide refers to the selective abortion of female fetuses due to son preference. The practice became widespread in South Asia with access to ultrasound technology in the late 20th century. Deep-rooted patriarchal beliefs, dowry practices, and economic reliance on male heirs fueled the trend (Jha et al., 2011). Historically, infanticide of newborn girls was documented in colonial records from India, suggesting long-standing gender bias that later shifted into medical technology misuse.

India and Nepal face the highest rates of female foeticide. A Lancet study estimated up to 10 million female fetuses aborted in India over two decades (Jha et al., 2011). Nepal's 2002 legalization of abortion was followed by rising concerns about sex-selective practices, especially in border areas with India (Ganatra, 2008). In Pakistan, reports also indicate clandestine abortions targeting female fetuses, though underreporting persists (Khan, 2019). In diaspora communities, sex-selective abortion has been reported among South Asians in Canada, the USA, and the UK. Studies in Canada show skewed sex ratios among children of Indian immigrants, suggesting continuation of the practice abroad (Almond et al., 2013).

India passed the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, banning sex determination and selective abortion. However, weak implementation of laws, lack of monitoring, and corruption allow the practice to continue (Jain, 2020). Nepal prohibits sex-selective abortion under its abortion laws, yet enforcement is limited. Internationally, organizations like the UNFPA and WHO highlight the demographic and human rights consequences, warning of "missing women" in South Asia. In Western countries, debates continue over balancing women's reproductive rights with banning sex-selective abortion (Almond et al., 2013).

Female Circumcision

Female circumcision, often referred to as female genital mutilation (FGM), is less documented in South Asia compared to Africa but has a long history among certain groups. The *Dawoodi Bohra* Muslim community in India, Pakistan, and Sri Lanka practices a form of FGM known as *khatna* (Muthal-Rathore, 2016). It is justified as a religious duty and linked to notions of purity and control over female sexuality. Unlike male circumcision, FGM has no medical benefit and is internationally recognized as a violation of human rights.

In South Asia, FGM is most visible in India's *Bohra community*, with estimates suggesting over 75% of *Bohra* women undergo *khatna* (Sathyanarayana, 2017). Reports also exist from *Bohra* communities in Pakistan and Sri Lanka. Beyond South Asia, migrant communities in the UK, USA, Australia, and Canada have reported cases, leading to legal actions against practitioners abroad (Ghadially, 2017).

India lacks explicit legislation banning FGM, though survivors have petitioned the Supreme Court for prohibition (Sathyanarayana, 2017). In Pakistan, the issue is seldom discussed publicly but recognized as occurring in *Bohra* populations. Internationally, WHO and UN agencies classify FGM as violence against women. Western countries such as the UK and USA criminalize FGM, with diaspora cases prosecuted in court. Despite these efforts, secrecy and cultural loyalty make enforcement challenging.

National and International Legal Provisions

Honour Killing and Impunity

In all South Asian countries, “honour” killings are treated as murders under general homicide laws. No state in India, Pakistan, Nepal, Bangladesh, Sri Lanka or Afghanistan explicitly legalizes such killings. Instead, perpetrators are punished under penal codes for murder (often with death or life terms). For example, India's Indian Penal Code (IPC) section 300 defines murder (punishable by death or life under Section 302 (Gujar, 2010). Pakistan historically allowed murderers to be pardoned by victims' families under its Qisas-Diyat laws, but the Criminal Law (Amendment) Act, 2016 made “honour” killings non-compoundable and mandated life imprisonment (Bilal, 2016; Tahir, 2022). In Pakistan's recent Wasim case, the Lahore High Court acquitted a confessed killer partly because the law's loopholes made motive hard to prove (Tahir, 2022). Similarly, Bangladesh's Penal Code prosecutes such killings as murder, with courts permitting no family pardon in homicide; Sri Lanka and Nepal likewise impose severe punishment for intentional homicide (often 25–life) without any legal honour defense. Afghanistan's Penal Code sections 394–397 punishes murder (up to death), but its Article 398 historically reduced sentences for killings “in the name of honour,” a provision critics urge be repealed (Human Rights Watch, 2010). Implementation in South Asia is uneven: survivors' families often forgive offenders and police may collude with tribal councils (e.g. khap panchayats in India), undermining justice (Human Rights Watch, 2010; Human Rights Watch, 2017; Tahir, 2022). Notably in India the Supreme Court has called sagotra (same-clan) marriages valid under law and prohibited community “honour” sanctions (Supreme Court Observer, 2018).

In diaspora and global law, honour killings are universally condemned as gender-based violence. For instance, UK courts treat honour murders as murder or manslaughter, and enactments on forced marriage and domestic violence address related coercion (e.g. Forced Marriage Protection Orders under the UK's Forced Marriage (Civil Protection) Act 2007). In Canada and the US, cases in immigrant communities illustrate that no special “honour” defense exists. All three countries also recognize that cultural “honour” claims cannot excuse violence: the Council of Europe's Istanbul Convention explicitly requires that “culture, custom, religion or so-called ‘honour’ shall not be regarded as justification” for gender-based violence (Council of Europe, 2011). Likewise, CEDAW obligates parties to eliminate traditional practices that discriminate against women, an obligation underscored by human rights bodies calling honour killings a grave form of sex-based violence.

Despite strict penalties, honour killings persist. In Pakistan an estimated 1,000 women are killed annually in this way (Human Rights Watch, 2017); in India and Bangladesh also hundreds of cases are reported each year. But police often classify crimes as “family disputes” and investigators may slack off. The Wasim case in Lahore highlighted evidentiary hurdles and mercy pardons undermining convictions (Tahir, 2022). The Supreme Court of India has directed police protection for inter-caste/caste-exogamous couples, but resources vary by region. In South Asian states

and abroad, stigma and intimidation hinder reporting: human rights reports note that even after Pakistan's 2016 law, many perpetrators go free by securing a family pardon or exploiting legal lacunae (Bilal, 2016; Tahir, 2022). It shows the poor implementation of the existing national and international legal provision and entrenched patriarchy and honour crimes in these courtiers.

Female Foeticide and Law Enforcement

Sex-selective abortion ("female foeticide") is criminalized in India, Nepal and, to an extent, Bangladesh. India's Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 (amended 2003) bars all prenatal sex determination and selection (Ministry of Health & Family Welfare, 1994). It requires registration of clinics and makes disclosure of fetal sex a punishable offence. Enforcement is a challenge, however: illegal ultrasound clinics proliferate and convictions are rare despite routine sex*ratio data showing continued girl-infanticide (National Health Mission Kerala, 2020). In Nepal, amendments to the Muluki Ain (Penal Code) and the 2018 Safe Motherhood & Reproductive Health Rights Act explicitly forbid sex-determination tests and sex-selective abortion, imposing imprisonment (2–6 years) and fines up to 50 thousand rupees for offenders (CREHPA & UNFPA, 2020). Bangladesh has no specific law, but its High Court in 2023 instructed public health authorities to discourage disclosure of fetal sex except for compelling medical needs (Sourav, 2025). Pakistan and Sri Lanka lack any prenatal sex-selection law, though media and NGOs report growing use of technology among wealthier groups; Pakistan is reportedly drafting legislation to ban gender revelation during pregnancy. Afghanistan's laws focus on abortion in general (illegal except to save the mother's life) and do not address sex-selection specifically.

The UK's Abortion Act 1967 allows termination on broad health grounds but does not list fetal sex as a reason (House of Commons, 2023). Official guidance (GMC/BMA) discourages sex-selection, and recent parliamentary reports urged restrictions on gender-revealing NIPT testing, but no outright ban exists. In the US, federal law is silent; a Congressional bill (Prenatal Nondiscrimination Act, 2022) attempted to prohibit sex-selection abortions, but only a handful of states (e.g. Illinois, Pennsylvania) have partial bans (United States Congress, 2022). In Canada, abortion is regulated by provinces but there is no criminal prohibition on sex-selection. International human rights instruments condemn sex-selection as a "harmful practice" linked to gender bias (CEDAW, CRC, and the UN SDGs) and urge measures to prevent gender-biased abortions, but they do not impose specific criminal sanctions.

Despite the national and international legal provisions, female foeticide has been continued in the society because of traditional discriminatory societal preferences. India's PCPNDT Act is undermined by loopholes (e.g. easy bribery of operators) and official complicity, and female-to-male child ratios remain skewed in states like Punjab and Haryana. Nepal's enforcement is nascent and cultural preference for sons persists in remote areas (CREHPA & UNFPA, 2020). In Bangladesh, even the High Court's moral suasion has not addressed deep-rooted son-preference, and underreporting is likely (Sourav, 2025). In diaspora communities (UK, North America), anecdotal evidence suggests some covert sex-selection via early NIPT testing (House of Commons, 2023), though hard data are lacking. Overall, while statutes punish the supply side (doctors, clinics) in India and Nepal, demand-side attitudes remain unaddressed.

Female Circumcision

Among South Asian countries, specific laws on female genital mutilation (FGM) are scarce. Pakistan and Afghanistan have no legislation directly banning FGM, relying instead on general criminal provisions (e.g. grievous harm, assault) – a gap highlighted by activists (Ali, 2024). India currently has no statute against FGM ("khatna"); a public interest petition (Sunita Tiwari v. Union of India) is pending before the Supreme Court. In 2018, the Court noted FGM violates women's constitutional rights and urged legislation, but so far no law exists (Supreme Court Observer, 2018). Sri Lanka and Bangladesh have no known practice or law on FGM. Nepal's legal reforms (Penal Code 2018) outlaw all child abuse, which would encompass FGM, but no cases are on record.

The UK's Female Genital Mutilation Act 2003 (amended 2015) criminalizes FGM (with up to 14 years' imprisonment) and includes extra-territorial jurisdiction. The Act also introduced Mandatory Reporting Duty for professionals and the "FGM Protection Order" for girls at risk. In the US, the Federal Prohibition of FGM Act 1996 (18 U.S.C. §116) made FGM on minors a federal crime (with state laws in most states). Canada criminalizes FGM under its Criminal Code (s.268(5)), and courts have interpreted abetting FGM as aggravated assault. Major international instruments condemn FGM: CEDAW General Recommendation No.14 explicitly calls for criminalization; the Istanbul Convention (Art.38) requires states to prohibit FGM (Council of Europe, 2011). But existing national and international legal frameworks haven't affected well in the South Asian countries. In India, absence of a statute means FGM (practiced by the Dawoodi Bohra sect) goes unpunished. A 2020 Supreme Court order referred the issue to a Constitution Bench (Supreme Court Observer, 2018), but legislative action has stalled. Despite media attention, no prosecution has occurred in Pakistan; existing child-abuse laws theoretically cover FGM, but social silence prevails (Ali, 2024). The UK only a few convictions (mainly for failing to protect girls) have occurred, and FGM often goes underground. In diaspora communities, cultural denial, fear of shaming, and transnational practices hinder enforcement. Experts stress that law alone is insufficient; community education and empowerment are needed.

Causes behind lack of laws and enforcement

Patriarchal culture and believe system has played a crucial role in perpetuating harmful practices against women and girls. In South Asian countries, the law promises equality and justice, but tradition still rules people's actions in everyday life. In the name of culture and faith many families and communities follow customs that contributes perpetuating practices of honor killing, female foeticide, and female circumcision.

In Pakistan and India, murder in the name of honor is punished under ordinary criminal law. Yet, families still protect killers. Police and courts are slow, and witnesses fear speaking. In rural areas, people trust local councils more than courts. These councils support harmful customs and claim they protect family honor. Similarly, national and international law bans sex-selective abortion, but people still prefer sons and continue female foeticide. It is an outcome of strong patriarchal power-relations and a value system that forces to have a boy in the family.

Women and girls in South Asian societies are subjected to harmful practices due to inadequate legal provisions, weak implementation of existing laws, and a patriarchal value system. For example, in many South Asian countries, one of the law enforcement agency they do not take such cases seriously and avoid to take action against perpetrators. Due to social shame, fear, and lack of a support system, survivors do not feel comfortable seeking justice from the formal judicial mechanism. Contrary, in Pakistan, families can forgive killers under Islamic law, which makes justice harder. Afghanistan still faces social approval of honor killings and harsh gender restrictions since the Taliban return. Local leaders often settle matters privately, and the victim's side is pressured to withdraw in India. Nepal and Bangladesh have laws that cover abortion and violence, but the implementation status seems too weak. Even in diaspora communities, police in the UK or Canada are more active, but migrant families often live by their old traditions. In addition, survivors feel ignored by the community. In the Banaz Mahmud and Shafia cases, both young women tried to seek help but were ignored. It shows the real challenges faced by the survivors for getting justice. The international human rights instruments like CEDAW and the Universal Declaration of Human Rights make it clear that no culture or religion can excuse violence. But in reality, traditions, believe systems, and outside pressure dominates the harmful practices. Change happens when the patriarchal power relations in the society reject the traditional discriminatory belief system and struggle against those harmful practices.

Civil society plays a strong role in creating awareness on people's rights, bringing hidden crimes to light, and advocating for justice. Similarly, media also plays an important role in bringing such criminal issues in the public and

make the state accountable. For example, the Shafia trial in Canada and Banaz Mahmood's story in the UK made global headlines. They brought the dark side of family honor and pushed governments to act. Civil society and media are playing an important role in bringing those issues in forefront, but their strategic and intensive role remain limited.

Western countries have found some ways to handle these practices. The UK set up a Forced Marriage Unit that helps victims in secret. Canada trains police to identify honor-based violence. Schools there also teach about equality and consent. These steps may not erase the problem, but they show how legal and social measures can work together. South Asian countries can adapt these ideas. For example, India could create local help desks for women who face threats from families. Nepal could make awareness Programmes part of its community health network. Pakistan could ban family pardons completely in murder cases. Religious scholars can also help by clarifying that faith does not support violence against women.

Social changes come from education, economic opportunity, and public awareness. Women must feel safe to speak, and men must be part of reform. The state, civil societies, educational institutions, and social change makers should play role for ending such harmful practices through strategic interventions through creative interventions. To create a just society, the state must ensure strategic interventions to protect human dignity and humanity, and address the aforementioned challenges.

Conclusion

Honor killing, female foeticide, and female circumcision are not only crimes but also deep wounds that show how customs control the lives of women in South Asia. Despite the national and international legal provisions, such crimes against women and girls haven't been abolished. It has still been protected in the name of tradition, culture, and belief system. Every country in the South Asian region has laws that punish murder and protect life. Yet, women are still killed in the name of honor, and girls are still denied birth or cut in secret. It reveals that the problem is not the absence of law but the weak system that fails to enforce the existing legal provisions, and the discriminatory mind set of the law enforcement agencies.

In honor killing, the control comes through fear and violence. In female foeticide, it comes through deciding which life should be born. In circumcision, it comes through forcing pain on girls for so-called purity. It shows that legal systems cannot work in isolation. Social change and community awareness are just as important. The state must be responsible to protect the rights of women and girls, required laws need to be made, need to implement the existing laws and policies, and make an intensive strategy and implement to ensure the human rights of women and girls.

Recommendations

Based on the findings, the following recommendations are made to help governments, civil society, and communities move toward real change:

Strengthen and clarify laws: South Asian countries should have dedicated legal provision to address honor killings, female foeticide, and female circumcision. The governments should implement such legal provisions to end such crimes.

Improve enforcement and reporting: Some of the countries already have laws that address the crimes against women and girls; however, those are not implemented effectively. The government should make sure that the existing laws are enforced effectively and that perpetrators are punished. Law enforcement agencies need better training to handle sensitive gender cases. Governments should set up special investigation units for crimes of this nature. Reporting

systems must protect the identity of victims and whistleblowers. In honor killing cases, witnesses should receive legal protection and relocation support if needed.

Speed up Justice: Survivors of gender-based violence are not getting justice on time, so, a fast-track hearing system in the courts must be initiated. It will increase trust among the women and girls and build confidence to seek for justice in gender-based violence cases.

Community-based awareness Programmes: An intensive awareness campaign against gender-based violence among families, students, and local communities must be implemented by the government. The religious and cultural leaders should also be empowered to address GVB and encouraged to speak against such practices. In addition, the media can also be mobilized to create wider awareness among the people about harmful practices, their impact on women and girls, and possible consequences. Social media campaigns can reach large audiences and spread awareness faster.

Education and youth involvement: Schools are the best place to start long-term change. The educational curricula should include chapters on gender equality, and human rights, covering the harmful practices and its impacts on society. Youth groups can lead campaigns in their own communities.

Economic and social support: Economic freedom reduces dependence and fear. Governments, CSOs, and private sector should provide economic opportunities to women. Financial independences help them raise voice against harmful practices such as female circumcision and forced abortion.

Cooperation across borders: South Asian countries share history and culture, but also similar problems. Regional cooperation under SAARC could help build a common plan to fight gender-based customs. Governments can exchange best practices among each-other, build strategies to address these challenges in a coordinated manner.

Support survivor voices: Survivors of these crimes are the most powerful voices for change. Governments, national and international organizations need to support survivors and amplify their voices for justice and end such harmful practices.

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Gender-based Violence Against Educated, Independent Women

Sambida Wagle* ·

Abstract

This study explores gender-based violence against educated and independent women in Nepal. It has been perceived that educated and empowered women claim their rights, challenge discrimination, and fight for justice, but they are compelled to face discrimination due to the patriarchal norms and value system. Women experience violence and discrimination across domestic spaces, workplaces, public spaces, and digital platforms. Mostly, educated and empowered women often face discrimination in the workplace, social-political engagements, and patriarchal cultural set-ups. This article highlights the different forms of gender-based violence against women in Nepal. The status of women's empowerment might have changed, making them more visible in public life, but it has also simultaneously exposed them to new forms of hostility. Visibility and backlash, normative lag, threatened masculinities, and fragile institutional enforcement are interlinked in continuing violence against empowered and independent women. Despite the legal and policy framework, lack of strong enforcement, institutional accountability, and discriminatory cultural practices, gender-based violence prevails rampant. Addressing this issue requires comprehensive strategies that combine legal provisions, survivor-centered mechanisms, and transforms in patriarchal social attitudes and behaviors. Only in such an environment women exercise autonomy and professional potential while experiencing safety, respect, and equality.

Keywords: *Empowered women, workplace sexual harassment, pay disparity, urban patriarchy*

Patriarchy: A Suppressive Weapon against women

Patriarchy has been deeply embedded in society over the centuries, resulting in the continuous suppression of women under male dominance. Historically, this oppression manifested through women being denied access to education, voting rights, ownership of property, and employment opportunities, while being confined to the role of homemakers as men assumed the position of breadwinners. Consequently, women became financially and socially dependent on men for even the smallest necessities, a dependency that further strengthened male control and perpetuated discrimination and violence.

In response, movements advocating for women's empowerment began to rise. The waves of feminism, beginning in the early 19th century, sought to dismantle these oppressive structures and ultimately shaped postmodern feminist thought. From the suffragette movement of the 1930s, which secured women's voting rights, to the second wave of the 1960s that challenged traditional gender roles and domestic inequality, and the early 2000s wave addressing gender pay gaps and sexual harassment, feminism has continually evolved. The fourth and most recent wave now focuses on the digital representation of women and online gender-based violence, underscoring the movement's ongoing relevance and adaptability.

Over the past two decades, Nepal has seen a steady rise in women's empowerment, reflected in constitutional guarantees, higher educational attainment, greater political representation, and increased participation in the formal workforce. The constitution of Nepal 2015 has guaranteed at least 33 percent representation in the House of Representatives

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and Provincial Assemblies. Women's representation in local governments seems encouraging. The Policy on Gender Equality and Social Inclusion (GESI) has been adopted; as a result, women's representation in the civil service, security sector, civil society organizations, and the entrepreneurship sector has gradually expanded. These indicate a progressive move toward gender equality in Nepal. However, national data reveal that more than one in four women report intimate partner violence, workplace harassment, wage discrimination, and barriers to advancement.

This paradox is a reality of Nepali society wherein women are educated and empowered, but compelled to suffer from gender-based violence, and remain vulnerable to violence in both private and public spheres. Their increasing visibility in public spaces, including politics, social work, and corporate sectors, often provokes backlash, as patriarchal norms reassert themselves in subtler but equally harmful ways. Rather than offering full protection, empowerment sometimes exposes women to new risks, challenging the assumption that education and economic independence alone guarantee safety or equality. This article delves into these evolving forms of modern-day violence and discrimination, particularly focusing on educated and empowered women in Nepal. While writing this article, literature including books, research reports of national and international organizations, articles on gender-based violence have been reviewed, and an online survey was conducted among young, educated, and professionally active women, such as politics, academia, civil society, international development organizations, the corporate sector, and digital content creation. A total of 44 individuals participated in the survey who shared their opinions, insights, and experiences of gender-based violence. Furthermore, two informal interviews with the women actively working in their respective fields were conducted to identify the depth, breadth, and nuances of gender-based violations in the workplace.

Rampant Gender-based Violation

Gender-Based Violence (GBV) refers to any act of physical, sexual, psychological, or economic harm directed against a person based on their gender. Rooted in unequal power relations, GBV is not merely a private or individual matter but a structural phenomenon that reflects and reinforces systemic patriarchy. The United Nations defines GBV as violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering, including threats, coercion, or deprivation of liberty, occurring in both public and private spheres. Violence against women constitutes “the most pervasive human rights violation in the world,” noting that up to six in ten women worldwide will suffer physical or sexual violence in their lifetime (Bachelet, 2011).

Gender-based violence at the workplace must be ended to increase women's leadership and participation in the state mechanism, to expand access to economic resources and opportunities, prevent violence and access to justice, and exercise global norms, policies, and standards of gender equality (UN Women, 2011).

On the contrary, educated, empowered, and independent women are still suffering from sexual harassment, bullying, intimidation, verbal abuse, coercion, and discrimination in Nepal. In the professional fields, discrimination occurs in the hiring and promotion of staff, as well as in the payment of wages and opportunities. It has occurred in both formal and informal sectors, ranging from corporate boardrooms to factories, farms, and domestic labour. Workplace GBV undermines women's professional achievements, discourages their participation, and perpetuates male-dominated organizational hierarchies. Even when laws exist, especially in the context of Nepal, which has legal provisions against sexual harassment, implementation is often weak, leading to underreporting and a lack of accountability.

Domestic and Intimate Partner Violence (IPV) has seemed high in Nepal despite a notable number of women being empowered. According to the survey carried out by Nepal Demographic and Health Survey (NDHS) in the year 2022, 27 percent of ever-partnered women aged 15–49 in Nepal have experienced some form of intimate partner violence (physical, sexual, or emotional) in their lifetime:

Nature of violence against women and girls

Physical Violence	23.2%
Sexual Violence	7.1%
Emotional Violence	12.8%

Notably, the proportion experiencing IPV in the 12 months rose from 14 percent (2016) to 17 percent (2022), which is a concerning trend given parallel improvements in education and legal rights. The NDHS analysis also identifies complex correlates: partner alcohol use, controlling behavior, lower household wealth, witnessing parental violence, and partner unemployment are all associated with elevated IPV risk (Nepal Demographic and Health Survey, 2022). In a domestic context apart from IPV, women have been found to feel under various non sexual biases. Stereotypically, women play dual roles of both breadwinners and homemakers, whereas working men are less likely to contribute to the domestic chores.

Politicians play a crucial role in formulating policies, making the state accountable for implementing those policies in practice. Nepal's mixed electoral systems have increased women's parliamentary representation. Women hold about 33 percent of seats in the House of Representatives and Provincial Assemblies. Women hold almost 40 percent representation in local governments. It's a significant progress in terms of women's political representation; however, persistent gendered political violence/harassment is still rampant, which limits substantive empowerment and can expose women politicians to targeted abuse and threats. Study shows that around 27 percent of educated and political representatives have experienced IPV in their lifetime (Sapkota, et al. 2024), and parliamentarians have faced misogynistic backlash or harassment in politics. It shows the reality of harassment against the women political representatives.

The corporate sector gives you a lot of work pressure. For most of the women who play the dual role of breadwinners and homemakers, workplace inflexibility and toxicity barely benefit a woman. There have been such instances wherein women have been the victims of varied forms of sexual harassment but are compelled to confine themselves within due to the fear of their job being taken away from them. *Section 4 of the Sexual Harassment at Workplace (Prevention) Act 2016* highlights activities that fall under sexual harassment. Although the act ensures reporting mechanisms are taken by the company or institution, its execution still remains questionable. This act steps up to provide legal security for not only professional women but also for house working women, but Nepal has no prescribed legal protection for the self-employed.

Apart from the sexual harassment, the corporation discriminates against women on the basis of workload, pay disparity, and at times tends to disregard the efforts given and the results brought in by women employees. The gender pays gap stands as one of the most evident indicators of gender-based discrimination. Even when women possess the same qualifications and experience as their male counterparts, they are often paid less.

Anonymous, 25 y/o.

"I am an advocate. I am working for one of the most reputable organizations that actively advocates for education. A male colleague and I are working at the same level, but I am getting less salary than my colleague. This is how organizations are creating gender-based disparity," – Anonymous

This disparity not only undermines women's economic stability but also reflects deep-rooted gender biases and social attitudes that undervalue their contributions to the workforce. The "glass ceiling effect" further exemplifies this inequality. It represents the invisible barriers that hinder women from advancing to top leadership positions within

organizations. Such barriers restrict women's career growth and reinforce gender disparities in decision-making and power distribution within the workplace.

This persistent gap not only sustains economic inequality but also harms women's long-term career development, limiting their ability to build wealth and attain financial independence. In addition, biased hiring and promotion practices remain a significant form of workplace sexism. Women frequently encounter preconceived notions about their competence, dedication, and suitability for specific roles. As a result, male candidates are often favored over equally or even more qualified women, depriving women of professional opportunities and restricting their career advancement.

Maternity discrimination represents another subtle yet pervasive form of gender bias that many women encounter in the workplace (Hao et al, 2023). Balancing professional and family responsibilities often poses challenges, and women may face prejudice or unfair treatment during pregnancy or while on maternity leave. This type of reproductive discrimination can manifest through reduced job opportunities, stalled career growth, or even unjust termination. Such practices not only hinder women's professional advancement but also reinforce traditional gender roles and stereotypes about women's primary responsibilities being domestic.

GBV in Practice: Existing Scenario

A survey was conducted to identify the practice of gender-based violence among the educated, empowered, and professional women in Nepal. 44 respondents participated in the survey across diverse employment sectors in Nepal. The majority of respondents (86 percent) are in the 19-30 age bracket, representing a predominantly young workforce. Some of them held a high school, Bachelor's degree, and a smaller proportion held a Master's degree, and beyond. Faculty and students, employees in the corporate sector, employees of I/NGOs, Informal/Self-employed, Digital Creators, and the Political sectors participated in the survey. Women working in all sectors have experienced gender-based violence in their respective fields.

The academic environment emerged as a space where gender-based violence manifests in subtle yet pervasive forms. Among academic respondents, approximately 47 percent reported experiencing discrimination or harassment from professors, supervisors, or colleagues. The most common forms included sexist remarks, grading biases, exclusion from opportunities, and feelings of being overlooked by institutional authorities.

A concerning pattern revealed that many respondents felt unsafe expressing their full potential in academic settings. When asked about feeling heard and safe in academic institutions, responses were mixed, with several respondents rating their comfort level between 2-4 on a scale. Notably, multiple participants reported being discouraged from research or leadership roles due to gender, indicating systemic barriers to women's advancement in academia.

The effectiveness of complaint handling mechanisms in universities was viewed skeptically by most respondents. Several indicated they were "not sure" whether universities handle sexual harassment complaints effectively, while others directly stated "no." This uncertainty and lack of confidence in institutional responses create a chilling effect on reporting.

The corporate environment presented a complex picture of gender-based violence. Among corporate employees, approximately 57 percent reported experiencing gender-based discrimination or harassment. The predominant forms included sexist remarks and jokes, unequal workload distribution, and unwanted contact. These manifestations suggest that workplace harassment often operates through seemingly innocuous interactions that normalize gender inequality. A striking finding concerned the perceived equality of women leaders. Responses were polarized, with

some strongly disagreeing that women leaders receive equal treatment to their male counterparts, while others agreed. This variation may reflect differences in organizational cultures or hierarchical levels.

Regarding reporting mechanisms, most corporate respondents indicated their organizations had HR or grievance mechanisms for sexual harassment. However, comfort levels with reporting varied significantly. Some respondents expressed a high likelihood that organizations would address reported incidents, while others were more skeptical. Fear of job loss or backlash deterred several respondents from reporting harassment, though not all had faced this hesitation.

The phenomenon of being spoken over or dominated in discussions was widespread, with the majority of corporate respondents having either experienced or observed this behavior. This micro-aggression appeared to be one of the most common forms of everyday sexism in professional environments. The NGO/INGO sector revealed a paradoxical reality. While these organizations often champion gender equality externally, internal practices frequently contradict these values. When asked whether NGOs and INGOs practice gender equality internally, responses ranged from "sometimes" to "rarely," with only a few indicating "always." Among NGO/INGO workers, approximately 44 percent reported experiencing or witnessing gender bias or exploitation. The most frequently cited forms included emotional manipulation, pay disparity, and different expectations for men and women. One respondent poignantly noted that "organizations considering themselves to be gender equality advocates barely practice it internally." Comfort levels with reporting incidents against colleagues varied, with most respondents rating themselves between 2-4 on a comfort scale. The perceived likelihood of organizations addressing reported incidents was generally "somewhat likely" or "very likely," suggesting some institutional responsiveness, though not universal confidence. An important observation from this sector was the prevalence of emotional manipulation as a control tactic. Unlike overt harassment, emotional manipulation operates through power dynamics and psychological pressure, making it harder to identify and address. The following is an example that reveals the status of discrimination against women within an organization:

"I was an employee of a well-known NGO that actively works for the protection and awareness of human rights. I faced multiple instances of discrimination from the administrators during appraisal and promotions, only because of my gender. My husband was also working under me in the same organization. I was demoted from the position of a Project Lead to a librarian despite holding a good education and experience in my respective sector, but my husband who used to work as my team member got promoted overnight, only because the office administration felt "a husband cannot be in a junior position to that of his wife." –Anonymous

Women in informal and self-employment faced distinct vulnerabilities. Respondents from this sector reported experiencing harassment or exploitation by clients, authorities, or community members. The primary form of violence reported was economic control, which restricts women's financial autonomy and decision-making power. Protection under existing GBV or labor laws was viewed skeptically. When asked if they felt protected, responses ranged from "maybe" to "no," indicating significant gaps in legal protection or enforcement. The biggest challenges identified for women in this sector included a lack of reporting systems and community stigma, which compound the isolation and vulnerability of women working outside formal structures.

Regarding whether education and independence reduce vulnerability in this field, all respondents agreed, suggesting that empowerment strategies could be effective. However, the persistence of economic control despite education indicates that structural barriers remain formidable.

The digital sphere presented unique forms of gender-based violence. Digital creators reported experiencing online abuse, stalking, and harassment related to their digital presence and content. The most frequently encountered forms included non-consensual sharing of photos and videos, and identity theft.

A critical finding was the inadequacy of digital platform protections. When asked whether digital platforms provide adequate protection or reporting tools against harassment, responses were predominantly "no," highlighting the failure of tech companies to create safe online environments for women content creators.

Economic discrimination was also prevalent, with respondents reporting unequal pay for brand deals, exploitation by agencies, and bias due to gender. This economic dimension of digital violence demonstrates how online harassment intersects with material consequences.

Alarming, respondents indicated they had to alter their content, appearance, or opinions online to avoid harassment. This self-censorship represents a form of control that limits women's authentic expression and participation in digital spaces.

Workers in project-based roles faced particular vulnerabilities due to job insecurity. Among these respondents, experiences of harassment or bias were reported, with unequal pay being the most common form of misconduct. Additional issues included unpaid overtime and professional exclusion from opportunities. A significant concern was retaliation for rejecting inappropriate behavior. Some respondents reported being denied future projects or opportunities after refusing to accept misconduct, creating a coercive environment where economic survival is tied to tolerating abuse.

The existence of clear policies or reporting systems for GBV in project-based work environments was generally lacking. Most respondents indicated "no" or "maybe," suggesting that temporary employment structures often lack institutional safeguards present in permanent positions. Regarding whether independence and professionalism are respected equally as male peers, responses varied from "neutral" to "strongly disagree," indicating persistent gender disparities in how women's work is valued and respected in freelance and contract settings.

Across all sectors, one respondent captured a crucial insight: "everyday sexism is one of the most prevalent and accepted forms of GBV." The survey revealed that being dominated or spoken over during discussions was nearly universal. This micro-aggression occurred in academic, corporate, NGO, and other professional settings, normalizing male dominance in communicative spaces. When asked about awareness of legal protections against GBV and workplace harassment in Nepal, responses were mixed but leaned toward "yes" and "somewhat." However, awareness of laws did not translate to confidence in their effectiveness or enforcement.

A strong consensus emerged around two critical observations. One, the overwhelming majority (approximately 93%) agreed that empowered women face more backlash because of their independence. This finding suggests that women's advancement triggers defensive reactions that manifest as increased violence or control attempts. Two, nearly all respondents agreed that patriarchy is so deeply entrenched that even highly educated and empowered women may still become victims of gender-based violence. This reflects a sobering recognition that individual empowerment, while important, cannot fully protect against systemic oppression.

There was near-universal agreement that even though women's status has improved, violence against them persists in different forms. This transformation of violence; from overt to subtle, from physical to psychological and economic, represents an adaptation of patriarchal control mechanisms to changing social conditions.

Empowered Women vs Strong Patriarchy

Educated and independent women in Nepal face a complex reality: while they enjoy greater autonomy, their visibility and independence often expose them to new forms of risk. The following overlapping factors show the paradoxical

relationship between empowered women and strong patriarchal power relations.

Visibility and contestation: As women step into public spaces, whether in politics, activism, the workplace, etc., they become more visible. This visibility has provoked backlash from partners, families, colleagues, or political opponents who perceive women's autonomy as a threat to traditional gender hierarchies.

Normative lag: Legal and structural reforms, such as political quotas or expanded access to education, have advanced faster than social norms. Where ideas about male authority or "appropriate" gender roles persist, women's assertiveness may be met with control, intimidation, or violence.

Economic dissonance and threatened masculinities: Shifts in women's economic independence have unsettled traditional gender expectations. Men facing unemployment, underemployment, or perceived loss of status have attempted to reassert control through coercion or violence.

Institutional fragility: Nepal has laws against GBV and workplace harassment, but enforcement is often weak. Police, courts, corporate HR, and labour inspectorates frequently lack resources, gender sensitivity, or survivor-focused protocols, limiting accountability and discouraging reporting.

Together, these factors create a situation in which empowerment through education, employment, or political participation enhances autonomy but simultaneously exposes women to new risks, both at home and in public life.

Conclusion

Nepal has experienced a vivid and complex picture of gender-based violence in multiple sectors, including politics, civil service, private spaces, and digital platforms. In academia, subtle discrimination and grading bias are common. In informal work, economic control and exploitation are frequent. For digital creators, harassment and threats in online spaces create unique challenges. Despite these differences, certain patterns are consistent. Every day sexism is normalized, institutions often fail to respond effectively to complaints, and women who are educated and independent frequently face increased scrutiny, hostility, and risk instead of protection.

Gender-based violence is not confined to a single workplace or sector but is practiced in almost all professional sectors. Women are knowledgeable, skilled, and empowered, and laws and workplace policies exist, but workplace harassment hasn't ended. The weak enforcement of laws, limited gender-sensitive protocols, and underreporting mean that these protections often do not result in real safety. Persistent social norms that favor patriarchal power further reinforce this vulnerability.

All in all, gender violence has always existed, exists, and will exist for the longest time; but just in different forms.

Addressing this challenge requires more than legal frameworks. It needs a strong institution that prioritize survivor safety, reporting systems that work, accountability in both workplaces and digital spaces, and cultural shifts in how gender and professional conduct are understood. Only by combining these efforts can women in Nepal experience empowerment as true safety and equality, rather than as a source of vulnerability.

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Rape: A Severe Crime Rooted in Patriarchal Power Structures

Sonika Neupane*

Abstract

This article highlights how patriarchal power relations has perpetuated rape in Nepali society. Patriarchy is being transformed to the generations through cultural norms and traditional practices. Societal awareness and legal provisions have played an influential role in bringing attention to the issue of gender and sexual violence. In spite of awareness, and legal provisions the frequency of sexual victimization including rape has remained relatively unchanged. This indicates that there is still more to learn about the underlying causes and contributing factors for rape in society. This article discusses the underlying causes and factors of perpetuating rape, and the ways for challenging the patriarchal power relations to end gender-based violence and rape against women and girls in Nepal.

Keywords: *Rape and patriarchy, victim blaming, cultural attitudes, women's rights.*

Patriarchal Structure and Persistence of Rape and Violence

Patriarchal power relations still prevail in every part of Nepali society. It views women as mere objects, powerless and second-class citizens, and society force to tolerate sexual assault, harassment and even rape. It promotes male supremacy, and the right to sex are profoundly ingrained in the culture (Heise, Moore & Toubia, 1995). The occurrence of rape has been closely linked to societal norms surrounding the use of violence as a tool to accomplish goals. Rape is more prevalent in cultures with a macho mindset, which emphasizes masculine honor, power, and physical prowess (Sanday, 1981).

The idea of patriarchy is deeply rooted in the history where women were not recognized as a legal person without a husband. The individuality of a woman was neither acknowledged nor appreciated because it had been embedded in various cultures that women are property (Cusmano, 2024). As such, in certain instances, married women were expected to provide sexual access to their husband, therefore, rape was not considered legally possible. It shows that rape is about a continuum of sexual intrusion into women's lives by men (Rao and Hayden, 2001).

The second-wave feminism in the second half of the twentieth century identified men's violence against women, for instance, rape, child sexual assault, domestic violence and various forms of harassment as a key method of patriarchal control (Pierceson, 2016). The society justifies such ideology under certain circumstances, reflecting societal acceptance of male perpetuation of violence against women. This cultural backdrop contributes to a pervasive criminal rape culture, where sexual violence is normalized or excused.

In 1970s, second-wave feminists in the United States had first used the term "rape culture" in a societal context which was introduced to reframe the understanding of sexual violence as a systematic issue, not an isolated issue. It reflects that gender-based and sexual violence are widespread social problem and not individual crimes which are perpetuated by society and its institutions, prevalent within a culture that tolerates, excuses, or trivializes them. Later, the concept widened with the resurgence of the #MeToo movement, when survivors of sexual assault and harassment were called to use the "hash tag" to "give people a sense of the magnitude of the problem (Khomami, 2017)". It is important to

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• I would like to express my sincere gratitude to Adv. Sharadha Timelsena for mentorship and scholarly guidance the research process.

understand that rape and rape culture are two different terms, which cannot be used interchangeably. Rape culture is "a complex of beliefs that encourages male sexual aggression and supports violence against women" and normalizes the use of physical and mental fear techniques to intimidate women. It is a society, an environment where women perceive threatened violence that ranges from sexual remarks to sexual touching to sometimes, rape itself (Buchwald, Fletcher and Roth, 1993)." According to Ann Burnett, the concept of rape culture explains how society perceives and behaves toward both rape victims and perpetrators (Gordon and Riger, 1991).

This article analyzes concept of rape and rape culture, and how the patriarchy has perpetuated rape culture. It also examines the role of media in shaping the perspective of the public in rape cases, identifies patriarchal norms that obstruct justice for the rape survivors, and analyzes legal gaps in the rape and sexual violence in Nepal. Findings of the literature review, opinions collected through the survey with the law students aged 22-24 are the basis of the arguments presented in the article. This article doesn't analyze how caste, ethnicity, class, disability, or sexuality may intersect with gender to shape vulnerability to sexual violence. This article primarily discusses the patriarchy and rape culture, and the contributing factors to the perpetuation of such criminal culture in Nepali society.

Patriarchy and 'Rape Culture'

Nepal is a patriarchal, patri-lineal and patri-focal society: its norms are heavily patriarchal and is reported to occur within almost all caste and ethnic communities in Nepal (Gurung, 2014). The heavy reliance on Hindu tradition and law, from birth to death, women are raised to be dependent on men (Aasha Nepal, 2025). In Nepal, men are viewed as the head of the family and justified as a normal practice for them to perform violence to control and dominate women (York, 2011). This demonstrates how deeply patriarchy is rooted in Nepalese society, and such belief often leads to the acceptance of male dominance over women.

For many years, sexual and gender-based violence (SGBV) against women has been pervasive in Nepali society, and indirectly perceived culture. The Constitution of Nepal, 2015 guarantees the rights against sexual violence as a fundamental right. The Article 38(3) states,

"No woman shall be subjected to physical, mental, sexual, psychological or other forms of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such an act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with the law (Constitution of Nepal, 2015)."

However, the law enforcement agency, particularly, the police is reluctant to file First Information Reports (FIRs) in cases of rape. Even where a case is registered, victims are often compelled to involve themselves in an out-of-court settlement, especially in those cases where such crimes are committed by people in power or committed by those under their protection. Due to prevailing patriarchal social-cultural attitudes that internalize gender stereotypes, the few women who want to fight for justice typically do not find a favorable environment in state institutions, such as police stations and courts (ICJ, 2020).

Political leaders and ruling elites often play a part in letting off criminals by asking them to pay compensation or even organizing a marriage between the rapist and the survivor. Recognizing the widespread issue of forced mediation, in December 2020, Nepal passed an ordinance which imposes a sentence of three years' imprisonment and a fine of up to 30 thousand rupees for those who force mediation or reconciliation between rape victims and perpetrators, or their families. Individuals holding public offices or representatives of people trying to mediate are liable to face more stringent penalties, including imprisonment of up to 3.5 years.

Contributing Factors to the Perpetuation of 'Rape Culture'

Various factors have been associated with perpetuating rape and generalizing it as a normal phenomenon. Patriarchal social and governance structures, weak implementation of constitutional and legal provisions, and lack of education and awareness have played a significant role in continuing such criminal violence against women and girls. Some of the major contributing factors for such violence have been described below:

Gender Roles and Sexism

Gender roles are societal constructs that divide men and women into two distinct entities, with one always superior to the other (Appiah, 2018). These distinctions are supposed to dictate how genders must act and think, by rewarding those who comply and punishing those who do not (Nagoski, 2015). Therefore, the main foundation of adversarial sexual beliefs is sexism rooted in a historical patriarchy in which men rule the world and men are the only ones with reason (Hobbes, 1651).

While males are viewed as superior and have the right to control women, including their bodies, rape culture flourishes, it supports the idea that female subordination is expected, and male aggressiveness is normal. In rape culture, women who do not fit the mold of traditional femininity, dress modestly, or act quietly are frequently held responsible for sexual assault. By encouraging ideas that man's appetites take precedence over women's permission or that women's sexuality exists mainly for male pleasure, this adds to the culture of rape.

Lack of Comprehensive Sexual Education

Rape culture is "at the heart of all our personal interactions and is part of all our social, societal, and environmental struggles," rather than starting or ending with rape (Burnett, 2015). Sexual assault and violence are just one facet of this society. Instead, our outdated ideas of gender roles for both men and women are the deeper foundations of rape culture (Sneen, 2019). For a long period of time, sexual education was one of the most neglected topics; however, things are changing now.

With the inclusion of Health, Population Education (H.P.E) as a compulsory subject for school going students, we can see that the present generation is aware about what is right and wrong. But the question that arises here is, "how are they being taught to perceive things?" Girls shouldn't be taught, either implicitly or explicitly, that their gender determines their power, that their voices are not equal, or that they are accountable for the conduct of men. Boys should be taught to ask for permission before engaging in physical contact and to respect others' limits. Furthermore, it is important to teach people of all genders that the traditional gender roles do not define them or others.

Influence of Digital Platforms

Rape culture is perpetuated most significantly by popular digital platforms. The contents created by various digital platforms normalize sexual assault, rape, and don't encourage seek for justice. This problem can only be made worse by easy access to digital platforms that accuses women of being the targets of violence. From early childhood, both men and women are exposed to the digital content's that portrays rape, which also contributes to shapes their conceptions of how and why it rape happens. Boys are especially vulnerable to these messages, because they are rarely depicted as victims and are presented with endless violent rapist male "role models" in the media (Miedzian 1993).

Youth's Perspective: Contributing Factors for Rape culture

A survey was conducted to understand the youth views on the concept of patriarchy, rape culture, and the changes

that occurred over time. 101 mostly youths participated in the survey as respondents. Out of 101 respondents, 60.40 percent were female and 39.60 percent were male. The higher number of female participants increases the study's reliability in representing women's views on issues like patriarchy and sexual violence.

Table No. 1: Number and percentages of respondents by age group

Age Group	No. of Respondents	Percentage
14-18	4	3.96
19-21	14	13.86
22-24	74	73.27
25-27	7	6.93
28 and above	2	1.98
Total	101	100

The age distribution of respondents is showed that most respondents (73.27 percent) were between the ages of 22 and 24; the smallest group (3.96 -1.98 percent) included respondents fewer than 18 and over 28. Most of the respondents were young, reflecting a socially aware generation.

Table No. 2: Field of Study of Respondents

Field of Study	No. of Respondents	Percentages
Law	69	70.41
Engineering	6	6.12
Computer/IT	7	7.14
Management	2	2.04
Medical/Health	3	3.06
Humanities & Others	11	11.22
Total	98	100

The table indicates that the largest group of respondents (70.41percent) were law students, followed by those from humanities and other faculties (11.22 percent). This shows that most respondents are aware of social justice and legal issues, which adds credibility to their responses.

Patriarchal Power Relation: Factor for the Perpetuation of Rape Culture

The patriarchal power structure plays a crucial role in perpetuating rape and rape culture in society. Patriarchy manifests in various ways, either at home, in society, or in the larger state structure. Survey shows that patriarchal power relations, mindset among individuals, and state agencies, including law enforcement agencies, and educational institutions have played a significant role in sustaining rape culture in Nepal. The table 3 shows that patriarchal mindset weak law enforcement and victim-blaming attitude plays major role in perpetuating rape culture in Nepali society.

Table 3: Factors Contributing to Rape Culture in Nepal

Factors	No. of Respondents	Percentages
Patriarchal Mindset	71	70.3
Weak Legal Enforcement	69	68.3
Victim-Blaming Attitude	58	57.4
Lack of Sex Education	44	43.6
Media Portrayal of Women	38	37.6

Patriarchal Power relation and Mindset

Survey shows that 77.2 percent households have been headed by man. This reflects a deep-rooted patriarchal pattern in Nepali households. Only 8.9 percent believed that both men and women share family leadership equally. It shapes the belief of male child that “Boys are the head”, women should be under men. Therefore, the teaching starts with the family where the parents teach equality to their children, it’s okay to do the dishes by male, and let female take most decisions at times. It starts with the relationship between the parents, how father treats mother. Although, these may seem to be a minor thing, yet it has a deeper impact in the upbringing of the child and shaping their thought.

Figure 1: Perception of Patriarchy's Influence on Gender Role

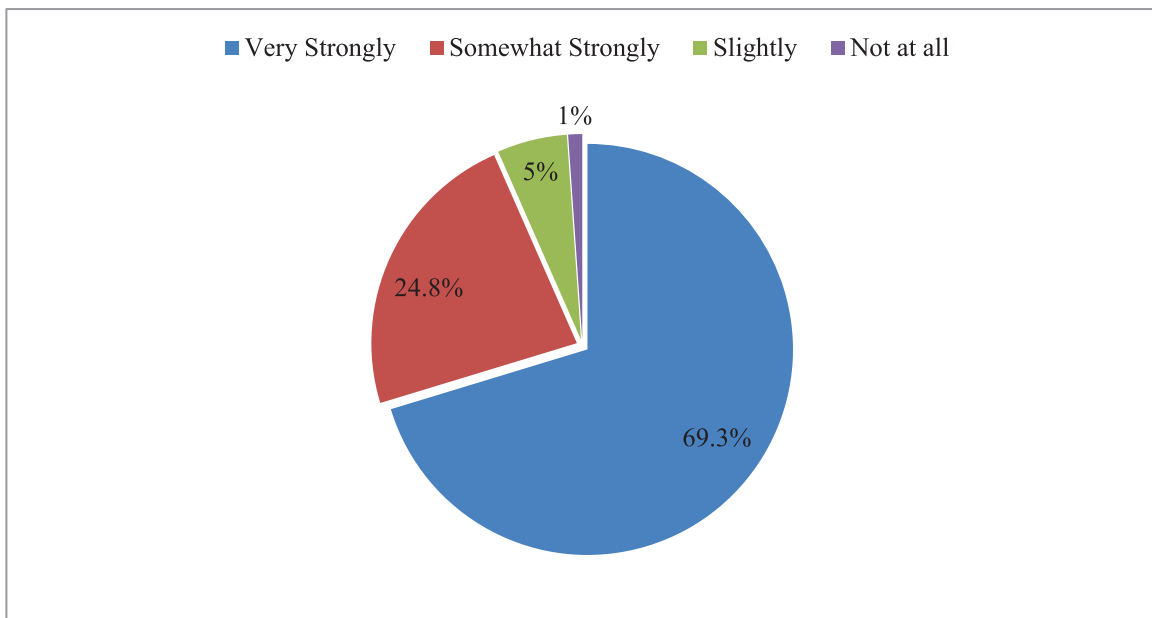


Figure 1 clearly shows a total of 70.3% of the respondents think that patriarchal mindset that has been embedded in our minds for sustaining rape culture. 69.3 percent respondents trust that patriarchy “very strongly” influences gender roles, while only 1.1 percent believed it does not. This shows that patriarchal beliefs continue to shape social expectations and power dynamics between men and women in Nepali society. Besides, a combined (strongly agree and agree) 72.3 percent of respondents agreed that rape is an act of power and control rather than sexual desire. This supports feminist theories that connect sexual violence to dominance rather than lust, emphasizing the social nature of the crime.

Victim-Blaming Culture and Attitude

Victim-blaming and silence culture, and social attitude compel women to fear on reporting cases. This survey also shows that 57.4 percent respondents said that victim blaming culture has contributed to sustain rape culture in Nepal. Patriarchy normalizes male dominance and controls women's choices. The societal expectations teach that "Men are dominant and women should be obedient or modest". This mindset leads to controlling behavior and excuses harassment or violence leading to the objectification and devaluation of women justifying victim-blaming, and tolerance toward violence, all of which feed into rape culture in daily life. Another way is gender roles and stereotypes which contribute to the notion that male sexual aggression is "natural" and those women should expect to be pursued relentlessly, blurring the lines of consent. Respondents even highlighted how, rape in incestuous cases are not filed, with the major reason being fear- fear of family, of reputation. This concept portrays how patriarchy and rape culture are connected.

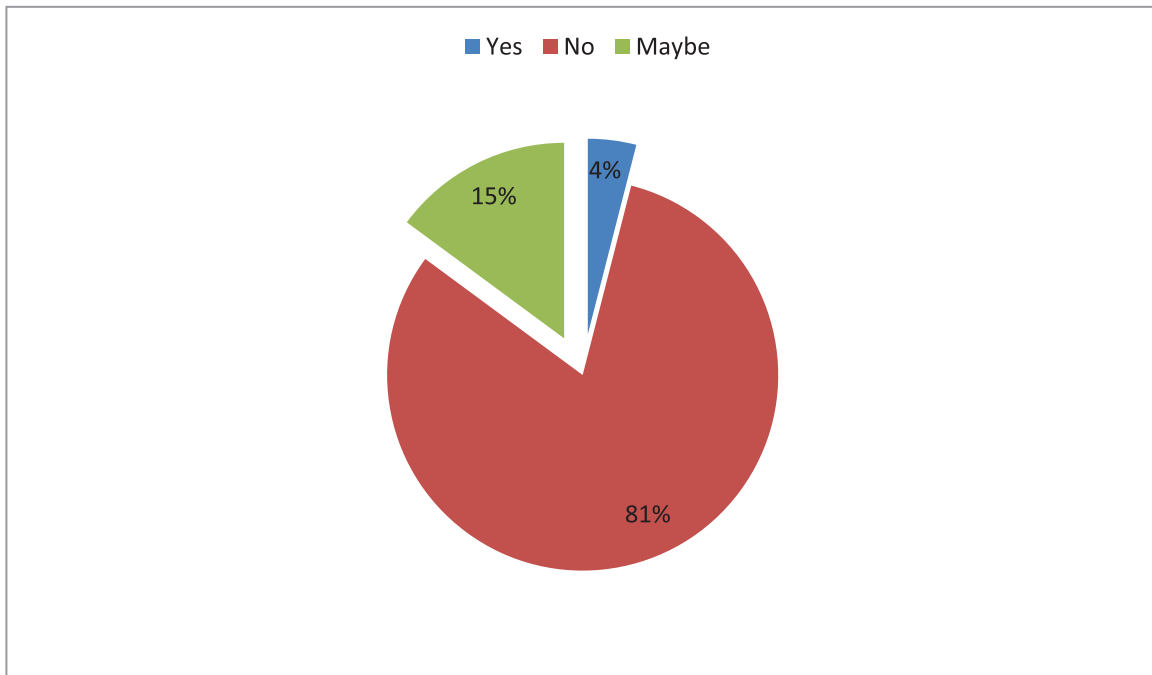
Weak Law Enforcement

Table 3 shows that 68.3 percent of youths considered that weak legal enforcement has contributed to sustaining rape culture. In addition, this survey shows 70.3 percent of respondents believe that the family and social attitude have become strong pillars to protect such culture. *Poor legal enforcement and corrupt political system suppress the voice of the people.* In Nepal, community people and political leaders often play a part in letting off criminals by asking them to pay compensation or even organizing a marriage between the rapist and the survivor. Recognizing the widespread issue of forced mediation, in December 2020, Nepal passed an ordinance which imposes a sentence of three years' imprisonment and a fine of up to NPR 30,000 for those who force mediation or reconciliation between rape victims and perpetrators, or their families. Individuals holding public office or people's representatives trying to mediate are liable to face more stringent penalties, including imprisonment of up to 3.5 years.

Media Portrayal of Women

The media plays an important role in informing and shaping the mindset of the audience. The media often portrays women as object in through songs, jokes, and entertainment Programmes that shape the ideology of the audience. So, upon being asked about the jokes, memes making fun of women's body contributing to rape culture, a total of 79 percent respondents (combined, 29.7% strongly and 48.5% agreed) agree that media is promoting rape culture through their contents. This clearly indicates that entertainment normalizes gender inequality, disrespects women by symbolically accepting violence by being a part of it. The data revealed that people have started to question the reporting of media, since a vast majority i.e., 81.2 percent respondents believed that media in Nepal is not fair or sensitive while reporting rape cases.

Figure No. 2: Fair and Sensitive Media Reporting of Rape Cases



Lack of Education on Rape and Crime

Educating people, families, and society on rape and rape culture as a severe crime is important in a patriarchal society like Nepal. But educating on such an important issue hasn't been taken seriously by educational institutions, social organizations, and the state itself. The most important change is education that teaches boys and girls about equality, respect, and consent from a young age. Harmful practices, criminal offense and legal measures also need to be widely discussed in educational institutions as well as social institutions. Co-education must emphasize the likeness between girls and boys, rather than differentiating between them.

Conclusion

It is important to end both rape and rape culture from the society ending existing patriarchal social and cultural norms, discriminatory societal attitudes which normalize sexual assault and rape. In intensive awareness campaign targeting to the families, students, youths and opinion leaders on gender-based violence, rape, rape culture and its consequences is essential. The state, law enforcement agencies, educational institutions, social organizations, and conscious people must take initiatives against severe crimes like rape and rape culture.

Victim Blaming is considered to the example of rape culture. In many societies the rape survivors are instead blamed for their own offence. Such societal attitudes heavily shape and influence our thoughts, so to eradicate the deep-rooted patriarchal thoughts; we need to change the perspective of people which is possible through education and awareness.

The laws regulating rape cases in Nepal have several flaws that prevent effective justice, such as a limited definition of rape, insufficient victim protection, and too onerous proof standards. As rape culture is rampant in the society, a targeted legal framework must be made and required policy framework should be prepared and implemented to fight against protectionist attitudes and patriarchal standards. In addition, social mechanisms that supports rape culture can be undermined through educational initiatives. After all, reducing rape culture starts with teaching consent

and respect early, challenging victim-blaming and sexist attitudes, believing survivors, and holding perpetrators accountable. Everyday actions like listening without judgment and modeling respect help build a culture of safety and equality. Media and educational institutions must promote positive gender roles instead of reinforcing stereotypes. Empowering women economically and socially will help them gain confidence and independence, creating a more balanced and respectful society.

Recommendations

The state has the main responsibility to end gender-based violence, including rape and rape culture. The societal attitudes and family environment has influenced patriarchal mindset that reflects in the actions of a person, so awareness among individuals, families, and society against gender-based violations is important. To end such severe criminal offenses against women and girls, recommendations to the stakeholders have been provided as follows:

- The government should define rape aligning it with the international human rights standards and must include non-penile penetration, digital penetration and coercive non-physical threats,
- The law should mandate confidential reporting channels, psychological support and legal aid to establish survivor-centric procedures,
- Should be abended those political leaders, influential figures, community elders and officials who suppress or negotiate rape cases,
- Integration of comprehensive sex education, consent- based curriculum, bodily autonomy, healthy masculinity, digital safety, gender equality, rape and criminal offenses and legal measures in the schools and conduct community-level awareness programmes targeting harmful gender norms;
- The local government should establish rapid response committees for sexual violence cases,
- The media should act as the voice of the survivors of gender-based violence, including rape, disseminate messages against such violence, and create pressure on the government to implement constitutional and legal provisions effectively to provide justice to the survivors.
- Conscious people should encourage families and communities to support the survivors rather than silencing them; we should prevent normalizing jokes and comments on women;
- Since, patriarchy mindset develops from the family settings, gender-equal parenting should be promoted with shared household roles, and non-violent communication models from early childhood.

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Human Dignity for Queer Advocacy

Subin Poudel* ·

Abstract

Nepal has earned global recognition for its progressive stance on LGBTQIA+ rights, with a Constitution that guarantees gender identity, non-discrimination, and proportional representation, and a Supreme Court that has issued landmark rulings on same-sex marriage, legal gender recognition, and spousal visa rights. Yet to the individuals for whom these provisions are meant to protect, constitutional promise and lived reality remain two different worlds. The Article 16 “right to a dignified life” promised under the Constitution of Nepal, has been taken as the foundational constitutional measure against which Nepal’s legal commitments to its LGBTQIA+ community must be tested. Dignity has been systematically treated as peripheral rather than central in Nepal’s queer advocacy landscape. Arguing that, this omission is not incidental but structural: by failing to demand that courts and the state operationalize what dignified life concretely means for LGBTQIA+ persons, advocates have inadvertently allowed the state to grant piecemeal protections while escaping its deeper constitutional obligation. Compounding this is dignity’s inherent conceptual instability as a legal standard, which grants judiciaries interpretive latitude wide enough to both recognize transgender identity and deny marriage equality within the same constitutional framework, and which is further exploited by the emerging anti-gender movement to dismantle the human rights architecture upon which queer dignity claims depend.

Keywords: *Human dignity, LGBTQIA+, Justice Barriers, Judicial Advocacy, the right to live with dignity*

Queer Community: Identity, and Struggle for Rights

"Expressing our dissenting view with the prevalent social structure or norms as well as legal provisions adopted by the state based on the interest of majority people i.e. heterosexual male and female persons, we are demanding for the appropriate place in the society for recognition of our rights" (Panta, 2007:262)

Almost two decades after the first ever landmark decision after which gained Nepal international recognition (Le Breton, 2023) on its progressive stance on LGBTQ+ rights, with constitutional provisions recognizing gender identity. The Supreme Court of Nepal made a verdict which allowed same-sex marriage (Gurung, 2023), which challenged the discriminatory laws that has criminalized the queer community, and initiated progressive legal framework for the LGBTQ+ individuals in Nepal (Khadgi, 2024). The Country’s constitution and courts have established important equality-based rights which attain a progressive flair on the issues of the LGBTQ+ community. However, the constitutional provisions including, the rights to proportional representation, rights against discrimination, and social justice, have not translated into required laws, policies and programmes of the government. Existing laws and decisions made by the Supreme Courts for the protection of rights of the LGBTQ+ individuals are not being implemented, required policy framework hasn't been made. At the same time, the Community is subjected to discrimination, humiliation, and violence in every step of their life (Blue Diamond Society, 2019). The LGBTQ+ community is struggling for the right to citizenship in one’s preferred name and gender, right to education, health, employment, social acceptance and dignified life.

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This article aims to critically analyze the access to exercise the fundamental rights, state initiatives, and judicial advocacy of the LGBTQ+ community to make the state accountable through the mobilization of Article 16 “the right to a dignified life” as an umbrella right. Despite Art. 47 limitation to make the enabling laws for Art. 16 within three years, the art has neither been mobilized nor created any enabling legislation as such. For queer youth in Nepal, dignity is not one right among many but the enabling condition upon which every other constitutional guarantee depends; without it, freedom of expression, equality, access to justice, economic security, physical safety, and political participation all collapse in practice. The survey data confirms this cascade: when dignity is denied, all other rights become inaccessible; when dignity is secured, queer individuals can finally exercise the full architecture of citizenship the Constitution promises them.

LGBTQIA+ Community and Dignity

Human dignity, in the simplest understanding is an attribute of humanity. Weisstub (2002) explains human dignity as signaling a term that goes to the heart of what constitutes the quality of humanness. Thomas Hobbes’s *Leviathan* (Hobbes, 1651) explores how dignity, honour, and obedience operate within a political community what he calls the Commonwealth.

Men frequently refer to Dignity as a man's social worth, which is the value placed on him by the Commonwealth. And the Commonwealth recognizes this value of him through positions of command, judicial authority, and public employment, as well as through names and titles created to distinguish this value. Because we believe he has the ability to assist, asking someone for aid in any way is an act of honour. Because no man obeys them who they believe to be powerless to assist or harm them, obedience is synonymous with respect.

He describes dignity, honor, and respect are not moral or spiritual qualities, but political and social constructs grounded in power. Andrew Clapham (2006) believes that human dignity encompasses four key dimensions. One, the absolute ban on any form of inhumane treatment, humiliation, or degrading conduct inflicted by one individual upon another; two, the guarantee of personal autonomy, ensuring each person has the freedom to make individual choices and achieve self-fulfillment; and, three, the acknowledgment that safeguarding collective identity and cultural belonging is often vital to preserving individual dignity; and fourth, the establishment of conditions that enable every person to meet their fundamental needs.

Despite dissensus regarding the widespread use of the concept, dignity has come to display three elements (Kant-I, 1991) in constitutional adjudication post World War II: the ontological element which entails that human beings have equal inherent human dignity that cannot be waived or diminished; the second element being the claim that inherent human dignity has to be recognized and respected; and the limited-state claim as the third element which entails that states have a positive obligation to progressively realize human dignity through the mechanism of socio-economic rights. The right to human dignity, like other human rights, displays a "super positive aspect" (Neuman, 1863) that derives legitimacy from an extra-legal source i.e. "a normative force independent of its embodiment in law" such as natural law, religion, universal morality or the underlying ethical values of a particular culture. Therefore, human rights are regarded as universal and transcend culture, politics and society.

Dignity requires recognition of personhood, identity, and inherent worth, demanding that citizens be treated not as subjects to be endured but as full human beings entitled to respect in all aspects of their lives. The constitution of Nepal has acknowledged this reality by treating any violation of fundamental rights as an assault on human dignity. Despite the constitutional provision, the Community has faced inhuman treatment, humiliation and discrimination. Multiple barriers on personal autonomy, freedom to choosing personal identity, and preservation of individual dignity have been faced by this community. Dignified life consists of freedom to exist without fear, equality before law and

society, access to justice when rights are violated, security from violence and abuse, well-being of every human being. These rights are fundamental human rights; therefore, these rights have to be implemented to ensure dignified life of the Community.

Human dignity, while enshrined in international law and many domestic jurisdictions since the Universal Declaration of Human Rights (1946), remains largely a difficult concept to define or apply consistently in legal contexts. Scholars and jurists disagree sharply on its practical requirements, and philosophers like Schopenhauer (2005) and Marx (1847) have dismissed it as vague moralizing altogether, rendering it what some describe as an "empty vessel" filled differently by each society. This vagueness grants judge's enormous interpretive freedom, producing inconsistent and even contradictory rulings on issues like abortion, obscenity, and social welfare, while different jurisdictions assign dignity vastly different legal weight; Germany treats it as absolute, whereas others apply it selectively. Courts further divide on whether to privilege individual autonomy or communal values, and struggle with threshold questions such as whether dignity protects fetuses, corporations, or the deceased.

The right to life is the cornerstone of all other rights. It has been characterized as "the most fundamental of all rights" (U.N. Secretary-General, 1955), as the "supreme human right" (Nowak, 2005) and as "the most basic right of all" (Korff, 2006). The right to life is "inherent" to all people. While foreign courts have had to go the extent of interpreting that the "Right to life = right to live with human dignity" (Maneka Gandhi, 1978), the Constitution of Nepal draws a critical jurisprudential distinction between the right to life and the right to live with dignity enshrined in Article 16. It operates within the domain of positive rights, specifically as a social and economic entitlement of citizenship. The right to life safeguards against arbitrary deprivation of existence, Article 16 mandates affirmative state action to ensure that life is lived under conditions commensurate with human worth and respect.

When we try to churn the volatility of the concept of dignity for queer advocacy, this conceptual instability is particularly dangerous: Judiciary may define "dignified life" in heteronormative terms, weaponizing the very principle invoked to recognize transgender rights in one courtroom to justify conversion therapy or deny same-sex marriage in another. When courts prioritize judicial "objectivity" over lived LGBTQ+ experiences, queer litigants bear a compounded burden; proving not only that discrimination occurred, but that their understanding of dignified existence merits recognition within frameworks historically designed by and for heteronormative society, reducing constitutional protections to aspirational rhetoric contingent on judicial sympathy rather than secured as inviolable rights. This coupled with the emerging narrative of the anti-gender movement opposing the very constructs of human rights, dismantles the possibility of curbing the right to live with dignity to ensure the right of the oppressed.

Constitutional and Legal Provisions and Implementation Status

The Constitution of Nepal ensured the right to acquire citizenship in Article 12 on person's identity, and the Supreme Court also made a verdict which has given rights to acquire citizenship based on their gender identity. Article 18, the right to equality which aimed to protect, empower and develop persons from the gender and sexual minorities community. The Article 42 on the right to social justice ensures that individuals from LGBTQ+ community have the right to representation in the state mechanism. The Supreme Court through *Panta's Case* (2007) also ruled government of Nepal to explore legislation for same-sex marriage. The Committee formed under the direction of the Supreme Court also made a report stating that 'marriage is an independent relationship between two persons, thus, the state should recognize' such marriage. However, neither the verdict of the Court nor the Committee Report has been taken into consideration for implementation. Several Piecemeal Recognitions have been given by the Apex Court.

Constitution and court verdicts have supported to enjoy rights of the LGBTQ+ community, but the state must

enact required laws, and policies to translate their rights in practical life. A survey conducted during this study shows that 53 percent of respondents strongly feel that the right to live with hasn't implemented effectively, and 39 percent agree that the provision is mentioned in the paper but hasn't been translated into practice. Despite the constitutional commitment enshrined under article 47 to effectively realize the rights conferred within three years of its commencement, the survey reports that 92.7 percent **of queer youth perceive a gap** between constitutional guarantees and actual implementation. This assessment represents the most significant finding of the study: three out of four young people feel the Constitution is failing them in practice.

Figure 2: Survey responses on the lived reality of queer youths

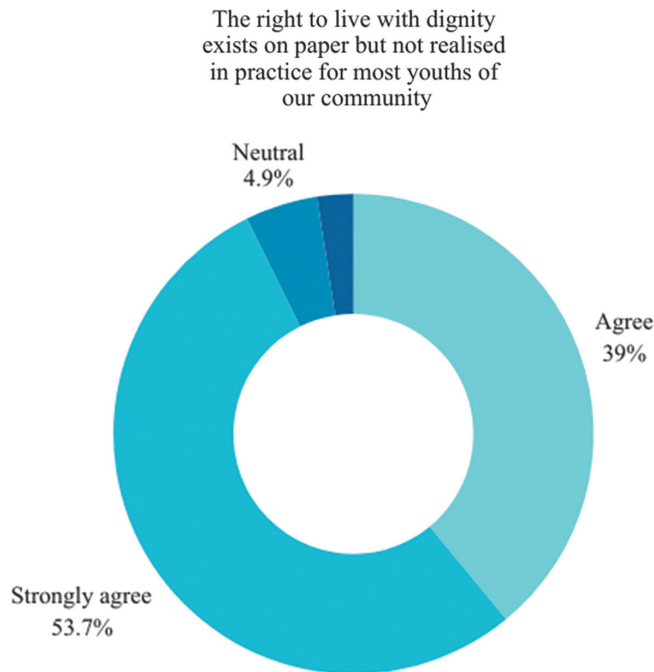
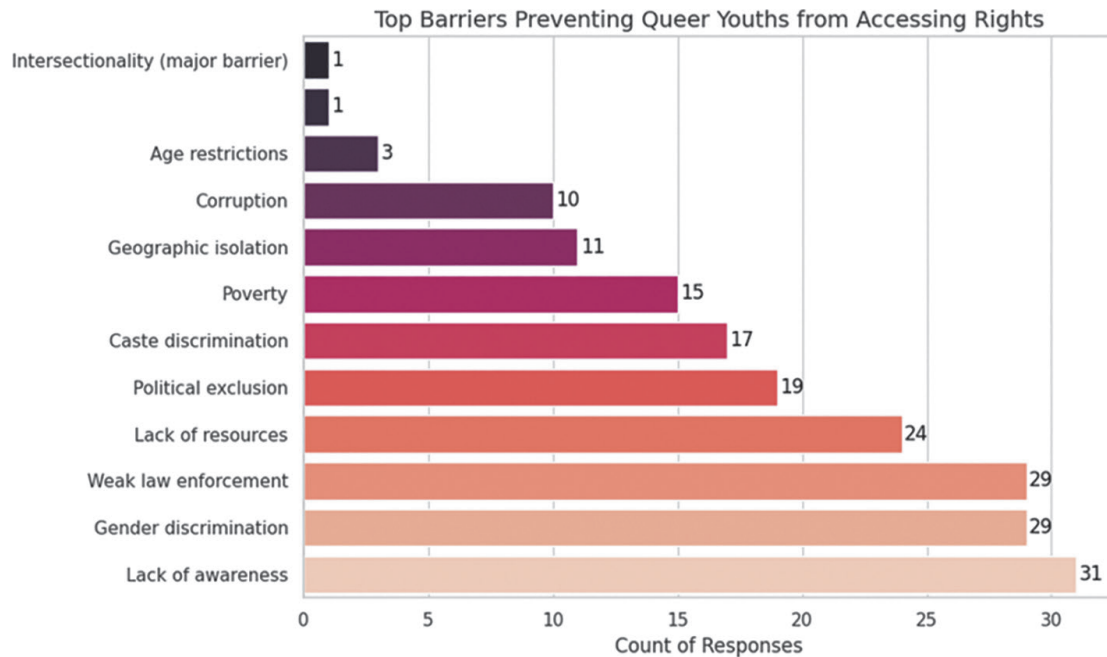


Figure 3: Queer youths identified the major barriers in accessing their rights.



Amongst several barriers faced by the Community, one of the important barriers is lack of awareness among the community members on enshrined rights in the constitution. 75.61 percent respondents mentioned that the most critical barrier for them in accessing the constitutional and legal rights is lack knowledge. The state is responsible in enforcing the existing constitutional and legal provisions entitled to the LGBTQ+ community. But this survey shows that 70.73 percent enforcement mechanisms fail to implement these legal provisions. Police, courts, and administrative bodies do not actively protect the Community individuals. Laws without enforcement are merely aspirational documents. In addition, the poor and marginalized communities belonging to the LGBTQ+ community have faced multifaced discrimination, who are struggling in various level to access to justice in Nepal.

Judicial advocacy for Justice

Nepal has been attempted and succeed in various court battle for ensuring the rights of LGBTQ+ community. In 2007 when the court issued its judgment in Sunil Babu Pant's Yogyakarta Principles case, it ordered the government to take three steps: to audit all laws and scrap discriminated against LGBT+ people; The Supreme Court called upon the State to *create appropriate environment and make legal provisions to enable the LGBTI people enjoy fundamental rights*" and issued a writ of mandamus stating that *non-discrimination provisions on the grounds of sexual orientation must be introduced into the Constitution of Nepal*. Hence, the government formed a study committee to study on same-sex marriage legislation, and legally recognize a "third gender" category based on an individual's own self-identification: The Supreme Court established that all LGBT+ persons are 'natural persons' and that their sexual orientation, gender identity are protected under fundamental rights. The homosexuals and third gender people are also human beings as other men and women are, and they are the citizens of this country as well (Panta, 2065 BS).

Judicial precedent has few teeth in Nepal. But as an augur of public opinion, the case resonated well. It also propelled Sunil Babu Pant to a new level of political legitimacy, representing an increasingly visible and popularly comprehensible minority. Officials frequently denied citizenship cards to individuals who wished to register as a third gender rather than as man or woman", which directly relates to accessibility barriers for LGBTQ+ individuals in Nepal. The judgment established that the new Constitution should "guarantee non-discrimination on the ground of

gender identity and sexual orientation" and that "fundamental rights of an individual should not be restricted on any grounds such as religion, culture, customs, values and the like".

The judicial advocacy and battle continued after the positive verdict by the Supreme Court on the legal identity of the Community. Precedent-setting case as the first same-sex marriage registration interim order was given by the Supreme Court by Pinky Gurung. The Supreme Court of Nepal's interim order in the Pinky Gurung case directed the government to register same-sex marriages temporarily, marking a significant judicial intervention towards marriage equality. However, the Court's reasoning predominantly framed the issue through the lens of equality under the law rather than grounding it explicitly in the constitutionally enshrined right to live with dignity. The Court invoked principles of non-discrimination and equal protection, emphasizing the right of LGBTQ+ individuals to be free from arbitrary differentiation in marriage registration. Yet, the decision stopped short of affirming a substantive right to dignity, which in constitutional jurisprudence extends beyond mere formal equality to recognize the inherent worth and autonomy of individuals in their personal and relational identities. The dignity framework encourages individuals' autonomy over intimate decisions and protecting personal identity against societal stigma and exclusion, which requires more holistic and inclusive legal protections (Gurung, 2023). The interim order's provisional and administrative character, coupled with the lack of comprehensive legislation and ongoing procedural barriers, means the ruling did not secure these deeper elements of dignity-based rights.

The Supreme Court of Nepal has ruled that Ruksana Kapali (2023), a transgender woman, should be legally recognized on all documents as a woman without having to submit to medical verification. Kapali, a Trans woman, has sued the government of Nepal over 50 times since 2021 pushing for rights-based legal recognition of gender identity. And while this recent judgment sets a precedent for Trans rights, the order only applies to Kapali, meaning others will have to petition courts to be legally recognized according to their gender identity. Similarly, the Supreme Court of Nepal instructed the government to recognize "the same-sex foreign spouse" of a Nepali citizen. The Supreme Court of Nepal's ruling in Adheep Pokharel and Tobias Volz v. Ministry of Home Affairs (2022) ordered immigration authorities to grant a non-tourist visa to the foreign same-sex spouse of a Nepali citizen, building on the landmark 2007 Sunil Babu Pant case and 2017 Suman Panta precedent. The court reiterated that denying spousal recognition to same-sex couples violates Nepal's constitutional guarantees and international obligations, emphasizing that a 2015 court-ordered committee report had already recommended removing gendered language from marriage laws to recognize marriage between "two persons" rather than exclusively "a man and a woman."

These four landmark cases examined in this study, reveal a troubling oversight: the systematic neglect of the right to live with dignity (Article 16) as the foundational anchor for queer advocacy. While these cases successfully challenged violations of equality (Article 18), freedom (Article 17), privacy (Article 28), and secured recognition of identity, marriage rights, and access to employment, education, and social security, they treated dignity as peripheral rather than central. The petitions framed dignity as one among many violated rights, failing to articulate how dignity serves as the constitutional linchpin without which all other rights lose their meaning and force.

This omission is particularly concerning because it allowed the state to grant piecemeal protections while avoiding its fundamental obligation to define and operationalize what living with dignity means for LGBTQ+ individuals. By not demanding that the state establish dignity as the measure against which all laws and policies must be tested, these cases inadvertently perpetuated a framework where rights can be acknowledged on paper while their lived realization remains elusive. The result is a legal landscape where LGBTQ+ communities have gained formal recognition but continue to exist in structural limbo, their dignity unrecognized within the Commonwealth's calculus, their worth still contingent on state validation rather than secured as an inherent constitutional guarantee.

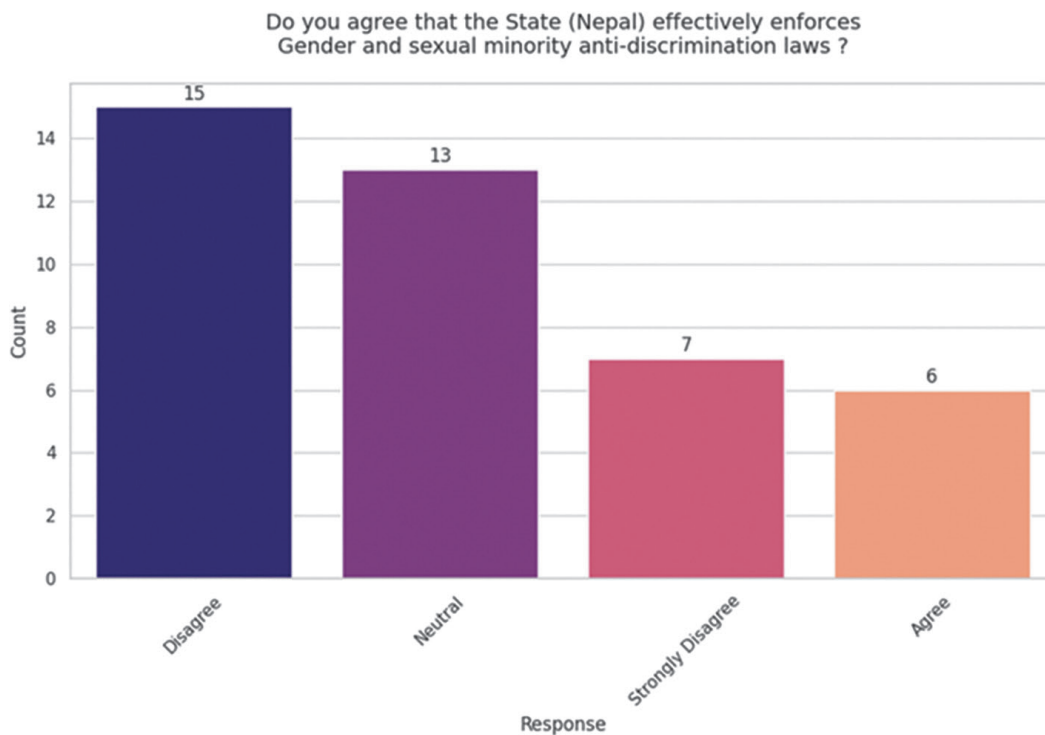
Critical Concerns and Implementation Gaps

The preceding paragraphs shows judicial orders remaining unimplemented for years, creating legal limbo that undermines both court authority and LGBTQ+ rights. Despite the 2007 directive, 2015 recommendations, and multiple rulings, the government has failed to translate judgments into legislative action, forcing individual couples to repeatedly litigate for rights already established in principle. This case-by-case approach, rather than comprehensive policy reform places unconscionable burdens on LGBTQ+ individuals and exposes the gap between Nepal’s progressive international reputation and stagnant domestic implementation, raising fundamental concerns about whether celebrated legal victories hold meaningful value when bureaucratic systems continue denying rights with impunity. The survey showed that 92.7 percent of respondents see a gap between constitutional promises and day-to-day practices.

The gap between Nepal’s celebrated legal framework and the lived experiences of the Community reveals a critical disconnect that demands empirical investigation. While constitutional provisions, Supreme Court rulings, and policy documents present a progressive facade that has earned Nepal international acclaim, these legal victories exist largely on paper creating what advocates describe as a “performative” inclusivity that stalls at implementation. This dissonance between doctrine and reality raises fundamental questions about how legal recognition translates or fails to translate into tangible rights and social acceptance. To move beyond the surface-level narrative of progressiveness and understand the actual impact of Nepal’s legal reforms, it becomes essential to examine empirical data that captures the experiences of the Community individuals navigating bureaucratic systems, seeking fundamental services, and asserting their constitutional rights in everyday contexts.

The state is responsible to implement the constitutional and legal provisions, and verdicts made by the Supreme Court to ensure the dignified life of the Community. But Nepal fails to implement own constitutional and legal provisions due to the lack of required laws and policies and insensitivity of government institutions.

Figure 4: Survey responses to the States queer enforcement capacity



Analysis of state enforcement perceptions toward the Community reveals that a significant majority of respondents fundamentally distrust the state's capacity or willingness to act. Only 14.63 percent of respondents agree that the government effectively enforces anti-discrimination laws, while 53.66 percent actively disagree or strongly disagree that enforcement is effective, and 31.71 percent remain neutral suggesting profound uncertainty rather than confidence. This pattern reveals more than simple dissatisfaction; it demonstrates a crisis of institutional legitimacy. Laws created to honor Nepal's constitutional commitments are sitting dormant on paper, not being applied by police, administrative offices, or regulatory bodies. Anti-discrimination provisions become meaningless when no institutional mechanism translates legal prohibition into protective action.

When LGBTQ+ youth attempt to seek justice the constitutional remedy for rights violations they encounter a second, equally debilitating barrier: institutional incompetence and insensitivity within the justice system itself. 51.2 percent disagree or strongly disagree that the justice system is sensitive and well-acquainted with LGBTQ+ issues, while 26.8 percent remain neutral, meaning 78 percent respondents cannot affirmatively state that the justice system understands the Communities issues. Only 23.1 percent express confidence in judicial competence. This creates a justice gap: rights exist constitutionally, violations occur regularly, but the institutional pathway from violation to remedy is broken. Even when queer youth attempt to report discrimination or seek legal remedy, the courts and justice institutions are perceived as either insensitive, ignorant, or actively hostile. This dual institutional failure enforcement deficit and justice system incompetence, creates a mechanism of ongoing exclusion where discrimination continues unchecked because neither enforcement nor justice mechanisms impose consequences.

Conclusion

What the queer community faces can be realized in the words of Bob Marley's "Punky Reggae Party", which signals a parallel struggle of marginalized punks and reggae communities in 1970s London, queer communities worldwide embody that same resistance against societal rejection. Like those outsiders who were "rejected by society" and "treated with impunity," facing discrimination and violence without accountability, LGBTQ+ individuals continue to experience systemic marginalization, hate crimes, legal exclusion, and state-sanctioned oppression that goes largely unpunished. Yet, mirroring Marley's assertion of being "protected by my dignity," The Community people maintain their inherent self-worth despite external degradation, refusing to internalize oppression and asserting a dignity that no law can grant or revoke because it simply exists. The call to "face reality" represents both acknowledgment of ongoing injustice and the foundation for authentic resistance.

The Community has already claimed their dignity through solidarity, chosen families, and spaces of radical acceptance. What remains is for states to listen, to witness, and to align their laws with a truth these communities have always known: that dignity lives in every person regardless of who they love or how they identify. The role of the state is not to decide who deserves dignity but to protect what already exists in its people. When governments recognize this reality and transform unjust systems accordingly, they do not grant rights but simply stop denying what was always there, creating societies where all people can live freely, safely, and fully as themselves. Nepal's commitment exists only in constitutional text, not in institutional practice. The high-level promise of dignity articulated in Articles 16 is systematically broken because the very institutions tasked with upholding it is seen as either ineffective or actively insensitive. The government needs to enact required laws and develop policies, and effectively implement the national and international human rights principles to ensure the right to dignity of the Community.

Recommendations

Based on these above discussion and analysis, the following steps needs crucial and detailed attention by the State to close the gap between the law and lived reality of the LGBTQAI+ community to realize the general objectives.

- Enact required laws and develop policies with the constitutional spirit on dignified life of the LGBTQ+ community.
- Litigate and advocate future litigations centering on Article 16 as the primary constitutional basis for queer rights claims, rather than treating equality or non-discrimination as the primary frame.
- Judiciary should creatively ensure the protection of the basic structure of Art 16. With consistency and affirmation to International Human Rights standards.
- Dismantling the complexity barrier by simplifying access to justice of the LGBTQ+ community in Nepal through applying protective measures.
- Hold state institutions, including law enforcement agencies accountable to implement the constitutional and legal provisions on the right to a dignified life of the LGBTQ+ Community.
- Support in creating safe spaces for civic participation and leadership development of this community with active participation of all members of society in recognition of LGBTQ+ rights.

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Unequal Wages: Structural Discrimination against Women

Suvekshya Thapa* ·

Abstract

This article examines the ongoing gender-based discrimination in wages in the informal labor sectors in Nepal. The constitutional and legal provision including international commitments, which ensures that nobody should be paid unequally regardless of gender identity. The dilemma is the gap between the legal provisions and practices, where women continue to receive much less than men, face occupational segregation, and are still predominantly found in devalued informal sectors. This is important as it undermines Nepal's constitutional promise of equality, violates international commitments, and limits inclusive economic growth. This article evaluates enforcement gaps and finds hidden structural barriers that perpetuates inequality due to weak implementation of the constitutional and legal provisions, lack of protection in informal employment, and deep-rooted workplace culture that normalizes wages disparity between man and women. The article argues that without changes to expand protections, acknowledge unpaid and informal work, and eliminate discriminatory norms, Nepal will likely not meet its goal of closing the gender pay gap by 2030.

Keywords: *Occupational segregation, structural discrimination, wage inequality, unpaid care work, workplace norms*

Labour, Gender and Pay Discrepancy

Gender-based discrimination and wage inequality are rampant across Nepal. Exclusion, restrictions and biases have been practiced based on their gender identity in most of the job opportunities, segregation of work, wage or payment, and working conditions. It is not just an issue of individual inequalities, but a deep-rooted structural discrimination against women that has been shaped by the social, institutional, and economic framework of the country. One of the measurable outcomes of such discrimination is discrepancies in wages or payments based on gender, where Nepali women earn on average 13 thousand 630 rupees per month compared to men's income, which is 19 thousand 464 rupees (Nepal Labor Force Survey 2027). It is not due to qualification or experiences, but because of deep-rooted gender-based social structures and systemic discrimination.

Nepal has made notable progress in promoting gender equality in its legislative framework, however, significant gender-based unequal payment and structural discrimination still exist, especially in the informal sectors, where women's labor is often undervalued, unsupported, and underpaid (The Annapurna Express, 2025). The Article 18 of the Constitution and Section 7 of the Labor Act (Labor Act 2074 BS) prohibits discrimination in remuneration for equal work on the ground of sex. Nepal is also a state party to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), with commitment to end gender based inequality. However, these protections are not properly enforced, particularly outside the formal economy.

Addressing this issue is urgent as female labor force participation is growing due to undergoing structural transformation in the labor and education sectors¹ but they lag far behind men. Nepali women aged 15–64 had

1 World Development Indicators (WDI), latest year available. Modeled ILO LFP. (The modeled ILO comparable number for FLFP in Nepal is 29 percent in 2016, an increase from 22 percent in 2003.)

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a labor force participation rate of only 26.3 percent in 2017–2018, while men were 53.8 percent (Alaref, et al.). This indicates that gender disparities still exist in both participation and income. Additionally, Nepal's commitment to Sustainable development Goals (SDGs), particularly Goal 5 on Gender Equality requires Nepal to take urgent actions to eliminate Gender pay Gaps by the end of 2030 as part of its international commitment (The Agenda for Sustainable Development, 2015). It is important to end such gender-based wage and payment discrepancies to implement constitutional commitments and achieve the SDG goal by 2030.

This article aims to introduce the underlying reasons behind undervaluation of women's work, associated factors to push women into lower-paid jobs, restrict them from leadership roles, and make unequal payment appear normal. Despite the legal protections against discrimination, gender-based discrimination in the payment still exists, the reasons for such practices have discussed in this article. While writing this article, constitutional and legal provisions, international commitments, and related mechanisms on gender-equality focusing on equal wages, have been analyzed. Furthermore, empirical data have also been collected through a survey among 23 participants who are working in formal and informal sectors. Collected data through literature review and survey have been analyzed from feminist and intersectional jurisprudence perspective in the article.

Constitutional and Legal Framework for Ensuring Equal Payment

The constitution of Nepal has ensured the right to equal payment regardless of gender identity. In its preamble, the Constitution of Nepal states that men and women have equal status and calls for the elimination of all forms of discrimination based on caste, class, gender, religion, or other similar characteristics (Constitution of Nepal, 2015). Likewise, among fundamental rights, the Constitution provides that all labour shall have the right to fair remuneration. Similarly, Article 18 of the Constitution specifically prohibits discrimination based on gender regarding payment for the same work.

Similarly, Nepal has enacted labor act, 2074 BS, which is being implemented. It As per this Act, no discrimination shall be made between the laborers in remuneration for equal value of work on the grounds of sex. The act also mandates that wages shall not be reduced on the grounds of gender (Labor Act 2074).

Nepal has also made international commitments to ensure the right to equality wages ratifying various international conventions and treaties. Nepal ratified ILO Convention No. 100 in 1976, which ensured equal remuneration regardless of gender identity. It addresses the issue of gender discrimination in the workplace and provides guidelines for paying equal wages for equal labor, regardless of gender. Each member party is responsible for ensuring that the principle of equal remuneration for men and women workers for equal value of work is applied to all workers. In addition, Nepal is also a party of Convention on the Elimination of All forms of Discrimination against Women (CEDWA) that also has ensured the right to equal remuneration, including benefits, and the rights to equal treatment in respect of work of equal value (CEDAW, 1979). Similarly, the International Convention on Economic, Social and Cultural Rights also has recognized the right of everyone to fair wages and equal remuneration for work of equal value without distinction of any kind, particularly based on gender (ICESCR, 1966). The government is responsible for implementing constitutional and legal provisions, as well as international commitments, for ensuring equal wages and non-discrimination against women in Nepal.

Experiences of Gender-based Discrimination in Payment

Although there is statutory recognition that guarantees equal pay for equal work, Nepal's market force data shows something different. There are visible gender disparities in participation, wages and opportunities.

Table 1: Gender Disparities in Nepal's Labour Market

S.N.	Indicator	Male	Female
1	Average Monthly Earnings	19,464	13,630
2	Labour Force Participation Rate (LFPR)	53.8%	26.3%
3	Managerial Positions	86.8%	13.2%
4	Unpaid Care Work Participation	47.2%	90.7%

Source: *Nepal Labour Force Survey III, Central Bureau of Statistics (2019)*.

The Nepal Labour Force Survey (2019) shows that men earned an average of 19 thousand 464 rupees per month, while women earned only 13 thousand 630 rupees, which is a 30 percent gap despite performing work of equal value. With women's labor force participation at 26.3 percent and men's at 53.8 percent, there is a significant barrier that limits women into paid job opportunities and benefits. Only 13.2 percent representation of women in managerial positions shows a glass ceiling effect that shows, even when women participate, they are less likely to access leadership positions. Overall, the data demonstrates that gender inequality in Nepal's labour market is not only about income differences but also about structural barriers in access, opportunity, and recognition.

Global Gender Gap Report (2025) indicates that Nepal ranks 125th with a gender priority score 0.648 which means Nepal has high ration of gender disparity. These statistics highlight that social norms and institutional hurdles, rather than just legal inequalities, are the primary causes of gender inequality in Nepal's labor market, which is highly structural.

Table 2: Demographic Information of Respondents (n = 25)

Category	Option	Count	Percentage
Gender	Men	6	24%
	Women	19	76%
Age Group	Below 20	4	16%
	20–29	18	72%
	30–39	2	8%
	40–49	1	4%
Employment Type	Formal Sector	13	52%
	Informal Sector	2	8%
	Self-Employed / Freelancer	2	8%
	Unemployed (Seeking Work)	8	32%
Occupational Level	Entry-Level	10	40%
	Mid-Level	6	24%
	Senior/Managerial	1	4%
	Other	8	32%

Source: *Gender Pay Equality in Nepali Workplaces, 2025*

Survey on Gender Pay Equality in Nepal Workforce (2025) conducted among twenty-five respondents (19 women and 6 men) representing diverse age groups with high majority of 20-29 years, employed in formal, informal, self-

employed, and unemployed but seeking job, and occupational levels shows that Nepali women experience gender-based pay disparities in practice. Most respondents (40 percent) who occupied entry-level positions indicated they experienced pay disparities often during the emergence of their career.

When asked whether men and women receive equal pay for similar work, only 28 percent affirmed that this was always the case, while the majority reported inconsistencies, 44 percent stated that equality occurred “sometimes” or “rarely,” and 32 percent were uncertain. This demonstrates that despite legal guarantees, perceptions of unequal pay remain common. Closely related, 36 percent of respondents described their workplaces as “not transparent at all” regarding salary structures, while 44 percent found them only “somewhat transparent.” The absence of transparency itself appears to reinforce the invisibility of wage discrimination.

Table 3: Workplace Experience & Perceptions

Question	Option	Count	Percentage
Equal pay for equal work?	Yes, always	8	32%
	Sometimes	6	24%
	Rarely	3	12%
	No	1	4%
	I'm not sure	7	28%
Salary transparency	Very transparent	5	20%
	Somewhat transparent	9	44%
	Not transparent	11	36%
Experienced/observed bias	Yes, directly	5	20%
	Observed in others	9	40%
	No	10	36%
	Prefer not to say	1	4%

Experiences of gender bias were widespread. 60 percent of respondents reported having either personally experienced or observed gender bias in pay, promotion, or access to opportunities, while only 36 percent stated that they had never encountered such bias. This aligns with broader evidence of subtle workplace discrimination in Nepal, where social and cultural expectations often influence career progression and wage decisions.

Table 4: Awareness & Legal Understanding

Question	Option	Count	Percentage
Aware of equal pay laws?	Yes	17	68%
	No	8	32%
Seen information at workplace?	Frequently	5	20%
	Occasionally	4	16%
	Never	16	64%
Confidence reporting discrimination	Yes, absolutely	11	44%
	Possibly, with hesitation	8	32%
	No, fear retaliation	4	16%
	Not applicable	2	8%
Gender pays equality by 2030?	Yes	2	8%
	Maybe	14	56%
	Unlikely	6	24%
	No	3	12%

Although 68 percent of respondents were aware that the Constitution and Labour Act guarantee equal pay for equal work, only 36 percent had ever received information about such rights through their workplace. 64 percent stated they had never seen any HR communication, poster, or training about equal pay. This demonstrates a significant communication and enforcement gap, legal protections exist, but awareness within workplaces remains weak.

Respondents also expressed limited confidence in reporting wage discrimination: only 8 percent respondents said they would “absolutely” report it, while 32 percent admitted they would not, citing fear of retaliation or lack of knowledge on how to proceed. This indicates that even when individuals recognize inequality, they often lack safe and accessible channels to raise the concern to the responsible authority.

When asked about the future of gender pay equality in Nepal, optimism was limited. Only 8 percent believed equality would be achieved by 2030, while the majority viewed it as “unlikely” or “no”, reflecting public skepticism toward the realization of Sustainable Development Goal 5 within the given timeframe.

Moving Forward: Overcoming Disparities, Ensuing Equal Payment

Various factors have contributed to the persistent disparity in compensation between men and women. Identifying and critically analyzing these factors is essential to addressing the underlying causes and promoting for equal payment. These issues are examined and discussed in detail in this section of the article.

Lack of Awareness on Rights to Equal Payment

Nepal’s Constitution (2015) and Labour Act, 2074 (2017) clearly prohibit discrimination in remuneration on the basis of gender and guarantee fair pay for work of equal value. Internationally, Nepal has ratified ILO Equal Remuneration Convention No. 100, CEDAW, and ICESCR, which reinforce these commitments. Despite these strong provisions, several legal gaps limit their effectiveness. One of them is lack of awareness about constitutional rights among the individuals is one of the major reasons for continuing the payment disparity. Survey conducted for this article shows that 60 percent of the respondents of this study reported that creating awareness among the individuals on their right

to equal payment is crucial. The gender role has been defined by the society which is discriminatory that often reflect in the payment as well. 44 percent respondents stated that gender-based cultural roles and expectation is playing significant role in creating disparity in payment to women.

Weak Implementation of Legal Provisions

The state is responsible for implementing constitutional and legal provisions concerning equal payment without gender disparity. One, the majority of women workers are engaged in informal sectors who are unprotected (IL, 2018). The law enforcement agencies haven't seriously taken this issue to be resolved. Two, the existing legislation focuses on wage equality but does not address broader issues such as occupational segregation, undervaluation of care work, or the recognition of unpaid labour, which are central to persistent gender pay gaps. In most of the cases, the state hasn't taken initiatives to address gaps. Three, the legal framework provides limited remedies for women in cases of wage discrimination, with procedural hurdles and lack of awareness further diminishing access to justice. The law enforcement agencies also have responsibility to create awareness among the people through initiating various activities. Such initiatives haven't taken by the state as well as law enforcement agencies.

For an example; the below case shows that the judiciary recognized gender wage inequality in Nepal rooted in the structural barriers that transcend the text of the law. The Supreme Court directed the government to implement the legal provisions, but yet those provisions are not yet implemented effectively.

Case 1:

Juri Nepal, Bishnu Prasad Pokhrel et al. v. Government of Nepal

This public interest litigation brought before the Supreme Court invoked Articles 16, 18, 29, 34 and 38(5) of the Constitution, arguing that widespread wage discrimination and the weak enforcement of minimum wages violate fundamental rights, especially for women in informal sectors. The petition stressed that the absence of Labour Courts outside Kathmandu Valley, insufficient labour offices, and weak monitoring mechanisms have collectively obstructed women's ability to access justice. It further highlighted that discrimination in wages persists across agriculture, domestic work, construction, and other informal sectors, despite constitutional guarantees of equal pay for equal work. The Supreme Court acknowledged that ensuring fair remuneration is a constitutional obligation. The Court recognized the structural nature of wage inequality and emphasized that the failure to effectively implement minimum wage laws disproportionately harms women's economic, social, and cultural rights including access to food, health, housing, and education. Considering the matter as one of public interest and gender justice, the Court directed the government to justify why make legal reforms, improve wage monitoring mechanisms, revise minimum wages annually, implement effectively.

Structural Barriers to Women in Workforce

Beyond legal gaps, lack of implementation challenges, there are invisible and hidden structural barriers that creates gender pay gaps in Nepal. A significant portion of the female workforce is employed in the informal sector, where labor protections are often weak or nonexistent. According to the Nepal Labour Force Survey, approximately 90.5 percent of employed women work in informal employment, encompassing sectors like agriculture, domestic work, and home-based industries (Nepal Labour Force Survey, 2019) are not receiving appropriate wages. On the other hand, these are considered as low job, do not have job security and social protections facilities. Women are working in these areas that they are compelled to work underpaid and vulnerable condition.

Moving to formal sectors, informal social norms often shape hiring and promotion practices subtly; women are indirectly perceived as less “committed” due to expectations around marriage, childbirth, and caregiving responsibilities. Such discriminatory mindset hinders in limiting raises, promotion, and taking responsibilities in high-paying projects. These hidden barriers operate alongside the more visible structural issues, making legal protections insufficient on their own. Without addressing ingrained workplace cultures, social expectations, and informal networks of power, women continue to face systemic disadvantages, even in sectors where formal laws guarantee equality. Recognizing and tackling these subtle dynamics is therefore essential to reducing gender pay gaps in Nepal.

Case 2: Khadga Bahadur Rai v. Universal Garments Pvt. Ltd. (2021)

A more focused instance of workplace-level discrimination was highlighted in the 2021 Labour Court case of Khadga Bahadur Rai v. Universal Garments Pvt. Ltd. The case revealed that woman workers in a garment factory were being paid lower wages than male workers for performing the same tasks. Upon reviewing the evidence, the Labour Court held that the employer had violated the principle of equal remuneration for equal value of work, a core provision of the Labour Act 2074 and a requirement under ILO Convention No. 100.

The Court ordered the company to pay the wage differences owed to woman workers and mandated corrective measures to prevent future discrimination. Although the ruling affirmed legal protections, it simultaneously exposed persistent gender wage disparities in Nepal’s industrial sector. The case is significant because it demonstrates that discriminatory wage practices are not limited to informal or unregulated workspaces; they also occur in formal industries with written contracts and managerial oversight. The decision serves as a crucial reminder that laws alone cannot eliminate wage inequality unless supported by strong enforcement, monitoring, and workplace-level compliance.

The abovementioned case shows that Nepal’s gender pay gap is not the result of a single deficiency but a combination of structural, institutional, and cultural barriers. The Supreme Court case highlights systemic failures such as limited access to justice, weak enforcement, and insufficient institutional mechanisms. Meanwhile, the Labour Court case demonstrates that wage discrimination occurs even where legal structures formally exist. These judicial findings reinforce the conclusion that Nepal’s gender pay gap persists not because of a lack of laws, but due to inadequate implementation, lack of monitoring, gender-biased workplace norms, and limited worker awareness precisely the challenges identified in both doctrinal and empirical sections of this research.

Occupational Segregation and Institutional Bias

In addition to legal gaps and structural barriers, gendered occupational segregation continues to reinforce wage disparities in Nepal. Women are disproportionately concentrated in customer-facing roles such as receptionists, front-desk officers, call-center staff, and hospitality service positions. These jobs are often characterized by lower pay, limited authority, and minimal upward mobility, despite requiring significant emotional labor. Employers frequently justify such placement based on gender stereotypes, valuing women’s perceived “pleasantness,” patience, or appearance as a business asset. This results in the commodification of women to attract clientele and undermines merit-based hiring (ILO, 2022).

Beyond horizontal segregation, a persistent “glass ceiling” restricts women’s access to leadership roles. Formal qualifications alone rarely determine advancement; informal mentorship networks, after-hours professional socialization, and internal patronage systems heavily influence promotions. Cultural expectations discourage women from participating in gathering and meetings organized in un-official timing or travel-based assignments, narrowing their eligibility for managerial responsibility. As leadership positions carry discretionary allowances and higher wage

brackets, exclusion from these channels generates cumulative pay disadvantages over time (Global Gender Gap Report, 2024).

The burden of unpaid care work further reduces women's availability for career-advancing tasks. Longstanding gender norms designate women as primary caregivers within Nepalese households, limiting their capacity to attend trainings, work overtime, or relocate for promotion. Standardized performance indicators such as uninterrupted availability, mobility, and schedule flexibility are framed as gender-neutral but disproportionately disadvantage women when applied without contextual sensitivity (UN Women Report, 2019). Accordingly, these evaluation models indirectly reinforce wage inequality despite formal legal protection.

Similarly, the so-called "motherhood penalty" leads employers to avoid hiring or promoting women of reproductive age based on presumed future absences or perceived lack of commitment. Even when women remain fully engaged, the stigma attached to motherhood influences salary negotiations, performance reviews, and access to leadership tracks (Correll et al., 2007). This subtle discrimination is difficult to detect through legal mechanisms, yet significantly affects lifetime earnings.

Hostile work environments compound these issues. Weak enforcement of Nepal's Sexual Harassment at Workplace (Prevention) Act, 2015 discourages female employees from reporting harassment, negotiating salaries, or remaining in sectors dominated by men. Women frequently shift to safer, lower-paid industries at the expense of long-term income stability. Additionally, collective bargaining platforms in Nepal remain male-dominated, limiting women's ability to influence wage-setting practices. As trade unions negotiate sectoral minimum wages and workplace protections, women's exclusion from these forums systematically reduces their bargaining power (ILO, 2018).

Consequently, the persistence of occupational segregation, appearance-based hiring, and culturally embedded evaluation standards demonstrates that Nepal's gender pay gap is not merely a legal issue, but an institutional and behavioral one. Effective reform must therefore address workplace culture, leadership representation, care-work redistribution, and transparency-based hiring norms, rather than relying solely on statutory guarantees.

Conclusion

The persistence of gender pay gaps in Nepal shows that equality in law does not always translate into equality in practice. While the Constitution, the Labour Act, and Nepal's international commitments recognize the principle of equal pay for equal work, weak enforcement and hidden structural barriers leave most women especially in the informal sector outside the protection of the law. The challenge, therefore, is not about drafting more promises but about ensuring that existing commitments are enforced in every workplace.

Nepal has pledged to achieve gender equality by 2030 under the Sustainable Development Goals, yet progress remains slow. If policymakers, employers, and society fail to act, the pay gap will continue to widen, undermining both human rights and economic growth. Closing the gap is more than a matter of fairness; it is a necessary condition for unlocking the full potential of Nepal's workforce. To achieve inclusive economic growth without first recognizing, valuing, and fairly compensating the work of women in both formal and informal economies is impossible. So, it is essential to initiate a decisive legal reform, implement it effectively, and create wider awareness on right to equal payment regardless of gender identity against patriarchal attitude and behaviors is fundamental to resolve these problems.

Recommendations

Addressing the gender pay gap in Nepal requires not only legal protections but also strong implementation action to implement the constitutional and legal provisions on right to equal wage or payment.

- The government must enforce the Constitution provisions, the Labour law, international obligations to ensure right to equal wage, job security, and social security in formal and informal both sectors.
- Registration of informal workers, community-based monitoring system that allows women to raise wage complaints without fear of retaliation must be initiated.
- Policymakers should also consider legal amendments that formally recognize home-based and domestic workers as part of the labour force, ensuring that their contributions are covered by minimum wage and equal pay protections.
- Greater transparency in wage-setting is necessary to uncover and address pay disparities that remain hidden behind organizational discretion. The state should prepare required policies and implement them effectively.
- State-sponsored childcare centers, maternity protections, and safe transport policies would relieve women of the disproportionate care burden that currently limits their access to better-paid jobs that needs to be managed.
- Investment in skill-building programmes, leadership training, and targeted scholarships for women particularly from rural and marginalized communities would help break the cycle of occupational segregation and increase women's representation in managerial roles.
- Social awareness campaigns are also needed to shift deep-rooted perceptions that women are less “committed” employees, which continue to influence hiring and promotion decisions despite legal guarantees.

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About JuRI-Nepal

Justice and Rights Institute-Nepal (JuRI-Nepal), established in 2011, is a non-governmental, apolitical and non-profit social organization working in the field of protection and promotion of human rights, strengthening social justice and rule of law in Nepal.

It has a vision of contributing to developing Nepal as a just, peaceful and prosperous society that respects, protects and upholds human rights, including promoting gender equality, social inclusion and economic, social and cultural rights of all. Apart from advocacy, capacity-building, monitoring and carrying out research and studies on various themes and subjects pertaining to human rights, strategic litigation has been one of the key approaches and tools JuRI-Nepal has adopted in order to strengthen protection of human rights in Nepal.

JuRI-Nepal believes in and promotes a collaborative approach between and amongst the likeminded organizations and individuals at local, provincial, federal and international level in order to advance the realization of human rights for all, particularly the marginalized and vulnerable segments of population in Nepal.

