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Examining Nepal's Safe Motherhood and Reproductive Health Rights Act, 2018: A Legal Analysis

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Abstract

This paper provides a comprehensive doctrinal and analytical examination of Nepal's Safe Motherhood and Reproductive Health Rights Act, 2018. By conducting a section-wise analysis of the Act's provisions, the paper assesses how it recognizes, safeguards, and operationalizes reproductive health rights within Nepal's constitutional framework and in alignment with international human rights standards. The paper highlights the Act's groundbreaking provisions, such as the right to safe abortion, paid maternity leave, and protection against discrimination and coercion, while also identifying gaps and challenges in implementation. Key challenges include conflicting legal provisions (notably with the Labor Act, 2074), inadequate health infrastructure, and entrenched socio-cultural stigma that hinder the full realization of these rights. The paper concludes by emphasizing the Act's progressive spirit and calls for harmonization of conflicting laws, investment in local health infrastructure, and robust awareness campaigns to transform this legislative promise into a lived reality for Nepali women.

Keywords: Nepal, Reproductive Health rights, Safe Motherhood

Introduction

Safe motherhood is a holistic approach to ensuring women's health and safety during pregnancy, childbirth, and the postpartum period (Koirala, 2021). It includes a variety of interventions, policies, and programs aimed at lowering maternal mortality and improving maternal health outcomes (Mehta, 2021). Safe motherhood efforts are critical for supporting women's reproductive rights, empowering women to make educated health and family planning decisions, and ensuring equal access to high-quality maternal healthcare services (Anand, 2022). According to the Section 2(t) of The Right to Safe Motherhood and Reproductive

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Health Rights Act, 2018, ""Safe motherhood" means motherhood service to be provided to women pursuant to this Act during the state of pregnancy, labor and child birth." (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018)

The physical, emotional, and social well-being in relation to the reproductive system and its functions is referred to as reproductive health (Ara, Maqbool, & Gani, 2022). It is a crucial component of overall health and covers a wide range of topics linked to STIs, family planning, pregnancy, delivery, and sexual health (Glasier, Gülmezoglu, Schmid, Moreno, & Look, 2006). Access to comprehensive and reasonably priced reproductive healthcare treatments, information, and education is a fundamental human right (Shaw & Cook, 2012). According to the Section 2(n) The Right to Safe Motherhood and Reproductive Health Rights Act, 2018, ""Reproductive health" means physical, mental and social health condition related to reproductive system, process and function." (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018) The Act was made under Article 38 Of the Constitution of Nepal (Nepal, Nepalko Sambidhan, (Constitution of Nepal), 2015) whose goal is to make motherhood and reproductive health service safe, qualitative, easily available, and accessible, in order to respect, protect and fulfill the right to safe motherhood and reproductive health of the women conferred by the Constitution of Nepal, which was authenticated on 2075/6/2 (18 September 2018). (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018)

Objective

- To conduct a detailed, section-wise analysis of Nepal's Safe Motherhood and Reproductive Health Rights Act, 2018, evaluating how each provision upholds reproductive health rights within the country's constitutional and international obligations.

Limitation

This paper is primarily a doctrinal analysis that focuses on the section-wise interpretation of the Safe Motherhood and Reproductive Health Rights Act, 2018**.** As such, it does not include empirical field data, personal interviews, or direct case law analysis beyond the statutory text itself.

Literature review

The right to reproductive health, including safe motherhood, has evolved from a medical concern to a legally protected human right over the last several decades. The transformation was catalyzed by the recognition that reproductive autonomy is central to the exercise of other rights, such as the right to life, health, dignity, and freedom from discrimination.

1. International Legal Framework and Evolution of Reproductive Rights

International human rights instruments have played a foundational role in articulating and promoting reproductive rights. The Universal Declaration of Human Rights, while not specific,

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set the tone by affirming the right to life, liberty, and security (UDHR, 1948). The International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly require states to take steps to ensure access to health care, including family planning and maternal health services under Article 12 (ICESCR, 1966) (CEDAW, 1979).

UN experts have explicitly framed access to safe abortion as an equality right: for example, a UN working group noted that *"the right to safe termination of pregnancy is an equality right for women,"* since restrictive laws force poor women into unsafe procedures (practice, 2017). International conferences reinforce this view: the 1994 Cairo ICPD called on governments to guarantee that all people can make "decisions concerning reproduction free of discrimination, coercion and violence", and the 1995 Beijing Platform of Action affirmed women's right to "have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence" (Rights, Reproductive rights are Human Rights, 2009).

Regionally, the South Asian Association for Regional Cooperation (SAARC) has also highlighted reproductive health as a priority: in 2024 SAARC and UN agencies warned of very high rates of adolescent pregnancy in South Asia and urged members to tackle root causes (child marriage, poor sex education, stigma) that undermine girls' reproductive rights (Cooperation, 2024). Together, these treaties and declarations establish that reproductive autonomy and access to maternal and reproductive health care are intrinsic to women's rights to health, equality and dignity.

2. Theoretical perspectives

In legal scholarship and feminist theory, reproductive justice and bodily autonomy are viewed as core to gender equality. Bodily autonomy has been described as a *"fundamental right"* – succinctly put, *"my body is for me; my body is my own"* (Fund, 2022), linking personal self-determination to political power and dignity. Reproductive justice scholars emphasize that rights must extend beyond medical access to include full social, economic and cultural wellbeing: Reproductive Justice has been defined as ensuring the *"complete physical, mental, spiritual, political, social, and economic wellbeing of women and girls, based on the full achievement and protection of women's human rights"* (Onwuachi-Saunders, Dang, & Murray, 2019). Legal commentators likewise note that a woman's *"autonomous decisions about her own body and reproductive functions"* lie at the core of her constitutional right to equality and privacy (practice, 2017). In sum, both human rights law and feminist theory regard control over reproduction free of coercion or stigma as indispensable to women's liberty and equality under the law.

3. Comparative South Asian Laws

- **India:** The Medical Termination of Pregnancy (MTP) Act (1971) was substantially liberalized by the 2021 amendment. The new law raises the general gestational limit to 20 weeks and 24 weeks for special categories (rape/incest survivors, minors, fetal anomalies, etc.), and explicitly allows unmarried women to seek abortion on the ground of contraceptive

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failure (Sobol, 2022). Post-24-weeks abortions now require approval by a medical board (Sobol, 2022). These reforms expanded access (e.g. to single women), but challenges remain, medical boards and facilities are unevenly distributed, and many providers remain unaware of the new criteria.

- **Bangladesh:** Under the Penal Code of 1860, abortion is illegal except to save the life of the woman (guttmacher, Menstrual Regulation and Unsafe Abortion in Bangladesh, 2017). In practice, Bangladesh permits an official "menstrual regulation" (MR) service – evacuation of the uterus up to 10–12 weeks after the last period under the national family planning program (guttmacher, Menstrual Regulation and Unsafe Abortion in Bangladesh, 2017). However, MR is not framed as a woman's legal entitlement to abortion, and many clinics refuse services beyond very early pregnancy. Unsafe abortions remain common: Guttmacher reports that in 2014 only an estimated 430,000 MR procedures took place nationally, while almost 1.2 million induced abortions (many unsafe) occurred (guttmacher, Menstrual Regulation and Unsafe Abortion in Bangladesh, 2017).
- **Sri Lanka:** The colonial-era Penal Code (1883) largely bans abortion. Chapter XVI makes it a crime (up to 3–7 years imprisonment) for a woman to have an abortion unless it was performed in good faith to save her life (Rights, Sri Lanka's Abortion Provisions, n.d.). There are no exceptions for rape or fetal impairment. In effect, nearly all abortions must be clandestine, and Sri Lanka has one of South Asia's most restrictive laws.

While there is a growing body of international and regional scholarship on reproductive rights and safe motherhood, there remains a limited doctrinal analysis of how Nepal's 2018 Safe Motherhood and Reproductive Health Rights Act aligns with (or deviates from) global human rights standards and constitutional guarantees in practice. Much of the existing literature such as UNFPA and WHO reports focuses on maternal health indicators and service delivery challenges, but does not systematically interrogate the Act's legal provisions or implementation within Nepal's federal governance framework.

Further, comparative studies on South Asian reproductive health laws tend to emphasize either India's MTP Act reforms or Bangladesh's menstrual regulation system, leaving Nepal's progressive, rights-based legal model underexplored particularly in the context of how contradictions (like conflicting maternity leave laws) or federalism-based administrative barriers impact enforceability.

Another under-researched area is the intersectionality of reproductive rights: while there is rich discussion of caste, class, and geography in maternal health literature, these intersectional vulnerabilities are rarely analyzed as legal barriers to the exercise of constitutional and statutory rights.

Methodology

This study employs a doctrinal legal research method grounded in a rights-based analytical framework. Primary legal sources including the 2018 Act itself, the Constitution of Nepal (2015), and related health and penal legislation are carefully examined using textual and purposive interpretation. The Act's language (for example, its Preamble explicitly directs the

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state "to respect, protect and fulfill woman's safe motherhood and reproductive health rights" provides the starting point for analysis. Secondary sources include official government reports, UN treaty body observations (such as CEDAW and ICESCR) and authoritative commentaries on reproductive rights. International human rights obligations are used as normative benchmarks: for instance, CEDAW Article 12 and General Recommendation 24 on health underscore a state's duty to respect, protect and fulfill sexual and reproductive health rights. Comparative analysis with South Asian jurisdictions (e.g. India's Medical Termination of Pregnancy law, Bangladesh's reproductive health policies) is also conducted to contextualize Nepal's law. In addition, relevant empirical studies and NGO reports on Nepal's maternal health and abortion services are reviewed to identify practical implementation issues. The methodology thus integrates statutory interpretation, comparative legal analysis, and human rights norm assessment to evaluate the Act comprehensively.

Findings

1. Recognition of rights

The fundamental aspect of law is to recognize the needs of people. While recognizing, it is codified through the rights which can be used by a person to guarantee his/her protection of life. Similarly, The Right to Safe Motherhood and Reproductive Health Rights Act, 2018 recognizes the reproductive health-related rights where a person is entitled with right to obtain service, counseling, information, right to determine the gap between births or the number of children, get information regarding contraceptives and use them, obtain the right to abortion nutritious, balanced diet and physical rest during the condition of pregnancy and childbirth and morbidity, get emergency obstetric care, basic emergency obstetric care, comprehensive emergency obstetric care, essential care for the new born baby and emergency care of the newborn baby and get reproductive health service needed during different situation of his/her lifecycle, in easily available, acceptable and safe manner under Section 3 to 5 (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018).

Furthermore, it entitles the right related to obstetric care which includes checking health at least four times during the pregnancy in normal condition, and other times with advice of a physician or competent health worker, receiving appropriate counseling, and obtaining safety measures and minimum care to be adopted during pregnancy in a respectful manner, get other services relating to family planning, right to get obstetric leave with pay, for a minimum of ninety-eight days to a woman and fifteen days to her husband before or after the delivery, get leave without pay, for a maximum of one year upon the recommendation of the expert doctor even if a pregnant woman gives birth to a dead infant or if the infant dies after birth furthermore, she holds right to breastfeed during office hours up to two years from the birth of the infant under Section 6 to 14 (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018).

The right to safe abortion is another crucial right recognized under this Act. It further entails the right of both mother and fetus. Here the right of the fetus is recognized demarcating the

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time limit where it can be aborted up to twelve weeks, with the consent of the pregnant woman, twenty-eight weeks, as per the consent of such woman, after the opinion of the licensed doctor, fetus (gestation) remained due to rape or incest if a pregnant woman is suffering from H.I.V. or other incurable diseases of such nature, or if there is probable of a chance of occurrence of defects in the fetus (gestation), or that there is such defect in the fetus of the womb that it cannot live even after birth, or condition of disability due to genetic defect or any other cause. Further, the right against coercion to abort is recognized for women where the personality of the fetus also gets associated. While performing all the functions, she also has the recognition of the right to confidentiality. In addition to that, the right to disability-friendly service, right against discrimination right to arrangement of protection is provided under Section 16 to 29 of this Act (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018).

Hence, the Act has recognized the right of women, newborn baby and men providing the service of reproductive health, personality of fetus ninety-eight days and fifteen days leave to both women and men.

2. **Creation of obligations**

For a group to get right, there has to be a co-relative factor that does its duty to fulfill those rights. Similarly, this Act has also created certain obligations to the institution for the very purpose. The Government of Nepal has an obligation to provide education, information, counseling, and service relating to sexual and reproductive health maintaining the principle of confidentiality. A governmental and community health institution providing obstetric care shall have to arrange a resting place, family planning services, record mechanism, certification to the family father or mother regarding his/her birth, morbidity care, competent health workers to provide obstetric care, or a midwife or other trained health worker if such a competent health worker is not available.

Also, they need to refer the patient to other governmental or community health institutions to the extent possible and to a non-governmental and private institution if not possible if they are not able to perform the function. Moreover, they have to maintain a record revealing the number of dead infants, women, and women who have undergone miscarriages or abortion (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018).

The licensed health worker who has fulfilled the prescribed standards and qualifications shall have to provide the pregnant woman with safe abortion service via appropriate technology and process of the service with the consent of a woman. Additionally, the Federal, Provincial, and Local Levels shall have to make arrangements for the reproductive health of a woman who is mentally disabled, neglected by the house, family, or relatives, or raped, with reciprocal coordination for keeping such a woman in a protection home, grant the amount, allocate the budget and form a committee. And, the institution providing job to those women and her husband are entailed to provide certain days leave. To conclude, Government of Nepal pleads the case from plaintiff who has been deprived of obstetric care, not issued the birth certificate,

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forced to conduct family planning, abortion and use contraceptives, involved in identifying sex of a child and done abortion upon doing so, discriminated and deprived of confidentiality under Section 15 to 24.

3. **Procedure for exercising rights**

   The procedure helps to way out the provision in a clearer and more precise form. Safe Motherhood and Reproductive Health Rights Regulations, 2020 made under Section 39 of the Act cover the aspects of the procedural part of the Act in more descriptive form. It has incorporated the provision of resting place, the format of paper of consent, format of certificates of infants, the issuance of amount of compensation, service charge, submission of annual report by health institutions under rules 3 to 26 (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार नियमावली, २०७७ (Safe Motherhood and Reproductive Health Rights Regulations, 2020, 2020).

4. **Provides grounds to be eligible to exercise rights**

   The Act under Section 18(4) has further created ground in some provision to exercise such right. For instance, in the case of a woman who is insane, and not in a condition to give consent instantly or who has not completed the age of eighteen years, her guardian or curator shall have to give consent for the conduction of abortion. Moreover, there is right to remedy against any health institution and health worker for any matter of the reproductive health service only if it is done in bad faith, and if the case if registered within six months from the date of knowledge of the commission of any offence, and the concerned appeal can be made in the high court within the limitation under Section 26 to 37 (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018), 2018).

5. **Provides remedies in case of breach of rights**

   A person who has been deprived of obstetric care, not issued the birth certificate, forced to conduct family planning, abortion and use contraceptives, involved in identifying sex of a child and done abortion upon doing so, discriminated against and deprived of confidentiality can plead in the concerned district court within limitation. A person committing such act shall be liable of imprisonment for a term not exceeding six months or fine not exceeding fifty thousand rupees or both the penalties for committing or getting committed the offence of depriving obstetric care, birth certificate and discrimination, imprisonment for three months to six months and fine not exceeding fifty thousand rupees for committing or getting committed the offence of forceful abortion and use of contraceptives, fine not exceeding fifty thousand rupees for committing or causing to be committed the offence of breaching, or causing to be breached of, confidentiality, imprisonment for a term not exceeding one year and fine not exceeding one hundred thousand rupees or both the penalties for committing or causing to be committed the offence of displacement and provision of compensation under Section 25 to 27 (Nepal, सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार नियमावली, २०७७ (Safe Motherhood and Reproductive Health Rights Regulations, 2020, 2020).

   A sentence of imprisonment for a term not exceeding one year and a fine not exceeding ten thousand rupees in the case of pregnancy of up to twelve weeks, imprisonment for a term not

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exceeding three years and a fine not exceeding thirty thousand rupees in the case of pregnancy of more than twelve weeks and up to twenty-five weeks, imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees in the case of pregnancy of more than twenty-five weeks in the offence of forceful conduction of abortion, and a sentence of imprisonment for a term of three months to six months, in the case of the offence of identifying, or causing identification of, the sex of the fetus with the intention of causing abortion, imprisonment for a term not exceeding one year, in the case of the offence of aborting or causing abortion after identifying the sex under Section 188 to 190 (Nepal, मुलुकी फौजदारी (संहिता) ऐन, २०७४, (The National Penal (Code) Act, 2017), 2017).

6. **Ensures protection of rights**

   Right to safe motherhood and reproductive health further ensures and protects the right to life. When one's health gets deteriorated it might lead to the situation of end of life, but if the rights related to health is ensured in first hand, it further protects the right to life. Furthermore, women's health is directly associated with fetus, hence if her rights are ensured it further gets connected with the fetus as well. There is provision of right to free obstetric care from governmental institution, by this, it ensures right to food because if they are freed from paying to obstetric care they can invest that money to nutritious food.

7. **Provides opportunity to all**

   The governmental institutions are obligated to provide free reproductive health care and services which helps women from rural areas to get easy access of services. Furthermore, there is also clear provision of remedies which can be seek in violation of mentioned rights, in such, a person can go to concerned district court under this Act. Moreover, it obligates institutions to create disable-friendly environment which helps such people to get services in ease and safe manner.

8. **Conduction of social welfare programmes**

   There is inclusion of subjects related to family planning, contraceptive devices, reproductive health in syllabus of secondary school students. Furthermore, Nepal had brought National Family Planning Costed Implementation Plan 2015-2020 which aimed to increase demand satisfied for modern contraceptives from 56% (NDHS, 2011) to 62.9% and Contraceptive Prevalence Rate (CPR) for modern methods from 47% in 2014 (MICS) to 50% by 2020. Likewise it aimed to reduce unmet need for FP from 25.2% in 2014 (MICS) to 22% which would allow the country to achieve a replacement level fertility of 2.1 births per women by 2021 (Nepal, National Family Planning Costed Implementation Plan 2015-2020, 2015).

   There is also Safe Motherhood Programme in Nepal which aims to reduce maternal and neonatal morbidity and mortality and to improve the maternal and neonatal health through preventive and promotive activities as well as by addressing avoidable factors that cause death during pregnancy, childbirth and postpartum period. Evidences suggest that three delays are important factors behind the maternal and new born (Nepal, Safe Motherhood Programme).

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Analysis

The Right to Safe Motherhood and Reproductive Health Rights Act, 2018 marks a significant milestone in Nepal's legal and policy framework by recognizing and protecting women's reproductive health rights, fostering gender equality, and ensuring access to basic healthcare services. One of the Act's most notable accomplishments is its broad and explicit acknowledgment of reproductive health-related rights. By affirming rights to safe abortion, paid maternity leave, breastfeeding during office hours, and protection against discrimination and breach of confidentiality, the Act seeks to uphold women's dignity and autonomy in reproductive decision-making. Additionally, its inclusion of disability-friendly services reflects a commitment to inclusivity and equitable healthcare access for all women, irrespective of physical or mental ability.

The Act commendably outlines the responsibilities of the government and healthcare institutions in providing reproductive health education, information, counseling, and services. This rights-based approach emphasizes the need to empower women through informed choices regarding their health and family planning. The provision for social welfare programs such as the Safe Motherhood Programme and the Family Planning Costed Implementation Plan underscores Nepal's commitment to improving maternal and neonatal outcomes. These policies are aligned with international health targets, including the Sustainable Development Goals (SDGs), particularly Goal 3 (good health and well-being) and Goal 5 (gender equality). However, several structural and legal challenges continue to impede the effective realization of these rights.

1. Lack of Awareness and Socio-Cultural Barriers

Despite the Act's expansive rights framework, many women particularly in rural and marginalized communities remain unaware of their entitlements. This lack of awareness, coupled with low literacy, deeply entrenched patriarchal norms, and stigma surrounding reproductive health topics (e.g., abortion, contraceptive use), discourages women from seeking services. For unmarried women or adolescents, fear of social judgment or rejection can deter them from accessing essential care.

Intersectional discrimination further compounds this issue. Women from Dalit, Madhesi, Indigenous, or remote mountain communities face overlapping barriers: caste-based exclusion, language and cultural disconnect with healthcare providers, poor infrastructure, and social neglect (Thapa, 2023). These realities contradict the universal spirit of the Act and create a gap between legal rights and lived experiences.

2. Implementation Challenges in a Federal Structure

Following Nepal's 2015 constitution, health governance has been decentralized to provincial and local levels. However, many of these subnational bodies lack the technical, financial, and administrative capacity to operationalize national programs like the SMRHR Act effectively. Some provinces have yet to adopt clear implementation protocols, allocate sufficient budgets, or train service providers to deliver rights-based reproductive healthcare. This decentralization

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without strong institutional capacity has resulted in fragmented, uneven access to services across the country.

3. Legal Inconsistencies and Gaps

The coexistence of conflicting legal provisions weakens the enforceability of the Act. For instance, the Labor Act, 2074 grants only 60 days of paid maternity leave, whereas the Safe Motherhood and Reproductive Health Rights Act mandates 98 days. This contradiction generates confusion among employers and employees alike. Applying the interpretative principle of lex specialis derogat legi generali (a special law prevails over a general one), the SMRHR Act being a newer, more specific, and constitutionally grounded legislation should ideally override earlier inconsistent provisions. Nonetheless, in the absence of harmonization or clarifying jurisprudence, such inconsistencies create practical barriers to the exercise of rights.

4. Access, Infrastructure, and Human Resource Gaps

Women in remote and underdeveloped areas continue to face critical barriers to accessing reproductive healthcare services. A severe shortage of trained healthcare providers, lack of fully equipped facilities, and inadequate referral and transport systems compromise service quality and timeliness. Studies have shown that many accredited facilities either do not offer abortion services or lack the capacity to provide emergency obstetric care despite being legally mandated to do so (Pandey, Seale, & Razee, 2019).

Moreover, although the Act promises free services through public health institutions, reports indicate that women are frequently turned away or charged informal fees due to untrained staff, drug shortages, or procedural mismanagement.

5. Weak Legal Remedies and Enforcement Mechanisms

While the Act provides for legal remedies in the event of rights violations, enforcement remains weak. Women rarely pursue litigation due to social stigma, lack of awareness, and limited access to legal aid or gender-sensitive judicial procedures (Malagodi, 2018). The absence of landmark enforcement cases since the Act's enactment suggests a gap between rights on paper and rights in practice. This raises concerns about the justiciability of reproductive rights and highlights the need for robust accountability mechanisms.

6. Policy Gaps and Lack of Monitoring

There is limited evidence of gender-responsive budgeting, transparent monitoring systems, or periodic evaluations to track the Act's implementation progress. Health facility audits, district-level data, and community-based scorecards are rarely used. This absence of monitoring tools makes it difficult to measure impact, address inefficiencies, and strengthen public trust in the system.

In summary, while the SMRHR Act represents a forward-thinking and progressive law that aligns Nepal with international human rights obligations, its effectiveness is undermined by weak implementation, inconsistent legal frameworks, insufficient institutional capacity, and socio-cultural barriers. Strengthening health infrastructure, harmonizing conflicting laws,

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fostering intersectional equity, and embedding robust accountability mechanisms are necessary to convert this legal vision into a lived reality for all Nepali women.

Conclusion

Nepal's 2018 Act represents a landmark, rights-based advance in the country's legal framework for maternal and reproductive health. By codifying safe motherhood and reproductive health as legal rights, it brings Nepal into closer alignment with its constitutional guarantees and international commitments. In particular, the Act significantly liberalizes access to abortion (e.g. permitting abortion up to 12 weeks on request and up to 28 weeks under broad health and social conditions), and mandates availability of quality maternal health services across federal and local health systems. This aligns with international guidance that reproductive health services are integral to the rights to life, health, and non-discrimination. Notably, studies have documented a reduction in maternal mortality following Nepal's safe abortion reforms, illustrating the Act's life-saving potential.

However, the research also reveals persistent limitations. Several systemic gaps inhibit full realization of the Act's promise. As one study observes, unsafe and clandestine abortions remain "common and mainly performed by untrained providers," exacting a heavy toll on women. Challenges of access, equity, and quality of care are well-documented. Institutional obstacles – such as poor health infrastructure in rural areas, insufficiently trained providers, and under-budgeted services – continue to undermine implementation. Conflicting or outdated laws (for example, penal code provisions not fully reconciled with the Act) and lack of clear guidelines have sown confusion among practitioners. In practice, the federal structure requires locally tailored strategies (which have so far been uneven), and social factors like stigma and low awareness about legal rights further limit impact.

In summary, while Nepal's 2018 Act is a significant legal achievement that anchors reproductive rights in law, its full effect depends on rigorous implementation. The Act's explicit grounding in women's constitutional rights means it must be interpreted purposively and enforced with the same vigor as core human rights. Without addressing the remaining legislative ambiguities and practical hurdles, the Act's rights-based vision will remain aspirational. The findings underscore the urgent need for targeted reforms and capacity-building to ensure the Act translates into real-world benefits for Nepali women's health and dignity.

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References

Anand, N. (2022). REPRODUCTIVE RIGHTS AND HEALTH: EMPOWERING WOMEN CHOICE. *A Handbook on Women's Human Rights*. New Delhi, New Delhi, India: Wisdom Press. Retrieved from https://www.wisdompress.co.in/wp-content/uploads/2022/10/A-Handbook-of-Womens-Human-Rights.pdf#page=15

Ara, I., Maqbool, M., & Gani, I. (2022). Reproductive Health of Women: Implications and attributes. *International Journal of Current Research in Physiology and Pharmacology*, 8-18. Retrieved from International Journal of Current Research in Physiology and Pharmacology

Convention on the Elimination of All Forms of Discrimination against Women. (1979).

Cooperation, S. A. (2024, July 12). *South Asian Association for Regional Cooperation and United Nations call for commitment to support millions of pregnant girls and young mothers in South Asia*. Retrieved from South Asian Association for Regional Cooperation: https://www.saarc-sec.org/index.php/press-release/366-south-asian-association-for-regional-cooperation-and-united-nations-call-for-commitment-to-support-millions-of-pregnant-girls-and-young-mothers-in-south-asia#:~:text=%E2%80%9CI%20appreciate%20the%20rol

Fund, U. N. (2022, March 16). *Bodily autonomy: A fundamental right*. Retrieved from United Nations Population Fund: https://www.unfpa.org/press/bodily-autonomy-fundamental-right#:~:text=Bodily%20autonomy%20means%20my%20body,choice%2C%20and%20it%E2%80%99s%20about%20dignity

Glasier, A., Gülmezoglu, A. M., Schmid, G. P., Moreno, C. G., & Look, P. F. (2006, November 4). Sexual and reproductive health: a matter of life and death. *The Lancet*, *368*(9547), 1595-1607. Retrieved from https://www.thelancet.com/journals/lancet/article/PIIS0140673606694786/abstract

Guttmacher. (2017, March). *Menstrual Regulation and Unsafe Abortion in Bangladesh*. Retrieved from guttmacher: https://www.guttmacher.org/fact-sheet/menstrual-regulation-unsafe-abortion-bangladesh#:~:text=,a%20woman%E2%80%99s%20last%20menstrual%20period

International Covenant on Economic, Social and Cultural Rights . (1966).

Koirala, S. (2021). Safe Motherhood Practices of Women in Urban and Rural Areas of Chitwan. *Marsyangdi Journal*, *2*, 94-103. Retrieved from https://www.nepjol.info/index.php/mj/article/download/39968/30437/116259

Mehta, L. S. (2021). Call to action: maternal health and saving mothers: a policy statement from the American Heart Association. *Circulation*, *144*(15), 251-269. doi:10.1161/CIR.0000000000001000

Nepal, G. o. (2015). National Family Planning Costed Implementation Plan 2015-2020. Government of Nepal.

Nepal, G. o. (2015, September 20). Nepalko Sambidhan, (Constitution of Nepal). *Constitution of Nepal*. Nepal: Government of Nepal.

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Nepal, G. o. (2017). मुलुकी फौजदारी (संहिता) ऐन, २०७४, (The National Penal (Code) Act, 2017). *मुलुकी फौजदारी (संहिता) ऐन, २०७४*, 118-120. Government of Nepal.

Nepal, G. o. (2018). सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार ऐन, २०७५, (The Right to Safe Motherhood and Reproductive Health Rights Act, 2018). Nepal: Government of Nepal.

Nepal, G. o. (2020). सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार नियमावली, २०७७ (Safe Motherhood and Reproductive Health Rights Regulations, 2020. *सुरक्षित मातृत्व तथा प्रजनन स्वास्थ्य अधिकार नियमावली, २०७७*. Nepal: Government of Nepal.

Nepal, G. o. (n.d.). Safe Motherhood Programme. Retrieved from https://mohp.gov.np/program/safe-motherhood-programme/en.

Onwuachi-Saunders, C., Dang, Q. P., & Murray, J. (2019). Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women. *J Healthc Sci Humanit*, *9*(1), 19-31. Retrieved from https://pmc.ncbi.nlm.nih.gov/articles/PMC9930478/#:~:text=its%20functions%20and%20processes,history%20and%20challenges%20of%20reproductive

practice, W. G. (2017). *Women's Autonomy, Equality and Reproductive Health in International Human Rights:*. Retrieved from https://www.iccl.ie/wp-content/uploads/2017/11/WomenAutonomyEqualityReproductive.pdf#:~:text=Further%2C%20the%20right%20to%20equality,right%20to%20safe%20termination%20of

Programme of Action of the International Conference on Population and Development. (1994).

Rights, C. f. (2009). *Reproductive rights are Human Rights.* Centre for Reproductive Rights. Retrieved from https://www.reproductiverights.org/sites/default/files/documents/RRareHR_final.pdf#:~:text=Paragraph%2096%20The%20human%20rights,%E2%80%A2

Rights, C. f. (2009). *Reproductive Rights are Human Rights.* Centre for Reproductive Rights. Retrieved from https://www.reproductiverights.org/sites/default/files/documents/RRareHR_final.pdf#:~:text=Paragraph%2096%20The%20human%20rights,%E2%80%A2

Rights, C. f. (n.d.). *Sri Lanka's Abortion Provisions*. Retrieved from Centre for Reproductive Rights: https://reproductiverights.org/maps/provision/sri-lankas-abortion-provisions/#:~:text=303,also%20be%20liable%20to%20fine

Shaw, D., & Cook, R. J. (2012, August 9). Applying human rights to improve access to reproductive health services. *International Journal of Gynecology & Obstetrics*. doi: https://doi.org/10.1016/j.ijgo.2012.03.018

Sobol, V. (2022, September). *Center's New Factsheet Explains Recent Changes to the Abortion Law in India*. Retrieved from Center for Reproductive Rights: https://reproductiverights.org/india-abortion-law-mtp-amendment-factsheet/#:~:text=,24%20weeks

Universal Declaration on Human Rights. (1948).