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Women's Right to Sexual and Reproductive Health: A Comparative Study of Abortion Legal Frameworks in Nepal and Indonesia

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Abstract

The fulfilment of women's sexual and reproductive health and rights remains challenging, especially concerning one of its most controversial issues, namely abortion. While the maternal deaths caused by unsafe abortion continue to be a concern, many countries retain repressive laws by banning abortion which has often been influenced by moral and religious reasons. This article aims to examine the abortion legal framework as part of sexual and reproductive health and rights through the lens of feminism by dissecting the degree of recognition of bodily integrity, personhood, equality, and diversity of women. Through a comparative approach between Indonesia and Nepal, this paper argues that Nepal's abortion regulation has a stronger recognition of women's bodily integrity, personhood, equality, and diversity in its abortion legal framework compared to Indonesia. Therefore, Nepal's experience in regulating abortion can serve as an inspiration for Indonesia in ensuring women's sexual and reproductive health and rights.

Keywords: sexual and reproductive rights, abortion law, women, Nepal, Indonesia

Introduction

The realisation of women's rights to sexual and reproductive health remains a challenge. One of the most controversial issues is abortion. Many countries are still reluctant to recognise women's right to abortion, let alone to provide such services. As a result of limited services for safe abortion, women with unwanted pregnancies have no choice but to risk their lives by performing unsafe abortion. In 2010-2014 for example, approximately 45% of women worldwide had unsafe abortions (WHO 2020), often resulting in death and injury to both the mothers and the babies. According to the WHO (2020), maternal deaths caused by unsafe abortion during this period were between 4.7%-13.2%.

Geographical context is closely related to the maternal mortality rate (MMR) caused by unsafe abortion. The WHO (2020) estimates that in developed countries, the maternal mortality rate is about 30 women for every 100,000 unsafe abortions. In contrast, in developing countries, there are an estimated 220 maternal deaths for every 100,000 unsafe abortions, with an even more tragic estimate of 520 deaths for every 100,000 unsafe abortions in the Sub-Saharan Africa region (WHO 2020). The higher number of maternal deaths in developing countries compared to developed countries is due to several factors: (1) laws prohibiting abortion; (2) poor services; (3) high cost of services; (4) stigma against women who have abortions; and (5) objections from health care providers.

With respect to the first factor, laws prohibiting abortion are often influenced by moral and religious reasons. There are two groups debating the moral status of abortion: the pro-life and pro-choice perspectives. The pro-life perspective holds that the foetus is a life form and therefore, abortion should be seen as a crime against human life. Those who support this perspective will situate their position around moral claims about the sacredness of life (Smith 2005). In contrast, the pro-choice perspective argues that the foetus is not yet a life form and therefore public policy should be geared towards protecting a woman's interest in controlling her own body (Smith 2005). In short, pro-life advocates prioritise the interests of the foetus, while pro-choice advocates argue for the interests of women (Smith 2005).

To date, the debate between the two perspectives has yet to reach a common ground. In Indonesia, for example, the discourse on abortion is still dominantly seen from a moral and religious perspective and that women's interests are marginalised (Resmini 2010; Fuad 2014; Kantriani & Arini 2020; Untara 2020). However,

there are also works that favour women, such as the Institute for Criminal Justice Reform (ICJR) (Rahmawati & Budiman 2023), which looks at abortion from a criminal law perspective, and then Dhewy (2017), who uses critical discourse analysis of abortion provisions in the Health Law and Government Regulations on Reproductive Health. Based on this, this paper aims to enrich the literature on abortion in Indonesia by discussing abortion as part of sexual and reproductive health through the lens of feminism with a comparative approach, a method that is still rarely used in discussing abortion in Indonesia except in the work of Handayani and Gomperts (2017).

Research Methodology

This paper uses a qualitative method with a comparative approach. In this case, a comparative study was conducted by looking at the laws in Nepal. This country was chosen for at least two reasons. Firstly, Nepal, like Indonesia, is a developing country and therefore faces similar challenges such as financial limitations in social services, including health care. However, the country's regulations of abortion through the 2018 Safe Motherhood and Reproductive Health Act has had a positive impact on the realisation of women's rights to sexual and reproductive health (Samandari et al. 2012). Therefore, Nepal can provide best practices in recognising women's bodily integrity, women as subjects, and equality and diversity to ensure women's rights to reproductive health, especially safe and affordable abortion.

Feminism and Abortion

The abortion debate is often framed by two dominant views, pro-life and pro-choice, which come from different philosophical frameworks. There are three philosophical approaches that have different moral implications for abortion: contractarianism, intrinsic value-based perspective, and interest-based approach. Contractarianism was put forward by social contract philosophers, such as Hobbes, Rousseau, and Locke, who saw the individual as rational agents who best understand what their interests are and how best to fulfil those interests (Cudd 2021). According to this view, the state is considered the product of a social contract between these rational agents to form an institution that functions to maintain law and order. From this contractual relationship, rights and responsibilities emerge.

In the context of abortion, this perspective sees that the foetus has no rights because it is not a rational agent who is a party to the social contract. Hence, abortion cannot be considered a crime against the foetus' right to life. This contractarian view is not free from criticism by feminists. One of them is Pateman, who criticises how rational agents are conceptualised by contractarianism advocates, who tend to refer to male humans. Meanwhile, women are considered not rational agents who have the capacity to contract socially. Women are considered to only be parties to a sexual contract that positions them as property over which men can exercise control (Pateman 1988; Diprose 1994). Consequently, when seeking an abortion, a woman must obtain the consent of the man who has control over her body.

The second is an intrinsic value-based approach whose argument is based on the sacredness of life. Following the teaching of Immanuel Kant, Papadaki (2012 p. 153) says that, "if a person engages in sexual intercourse, which is seen as an activity of procreation, that person should also be prepared to accept the consequences of that activity. This includes having a child and being responsible for ensuring that the child has a decent life". Specifically on abortion, Dennis (2008 pp. 130-131) argues that abortion goes against the nature of women, who tend to be seen essentially as compassionate and sympathetic agents. Based on this view, the state should ban abortion and requires its citizens to recognise and respect the intrinsic value or sacredness of human life, including the foetus (Rakowski 1994). Through this approach, the woman and the foetus are both seen as having intrinsic value that cannot be negated by each other, whereas intrinsic value can only be possessed by an autonomous entity. Thus, the foetus cannot be said to have intrinsic value because the foetus is not an autonomous entity but is still dependent on the body of the woman who carries it. Therefore, intrinsic value in the context of abortion should only belong to the woman.

The third approach is interest-based, introduced by Utilitarians. Following Jeremy Bentham, Joel Feinberg sees that "only beings with interests can have moral status" (Steinbock 2011, p. xiv). The interest to pursue pleasure and avoid pain is the source of an entity's well-being and the basis of its moral and legal standing (Steinbock 2011). According to this interest-based (utilitarian) perspective, entities that cannot have interests cannot have rights (Steinbock 2011):

> Since foetuses do not have interests, they do not have moral standing. Although they do not have moral standing, foetuses still have moral values that constrain how they should be treated. Their moral worth can arise from the interests of others, who are responsible for ensuring their welfare (Steinbock 2011 p. 50).

Consequently, when there is a conflict between the moral standing of a pregnant woman and the moral worth of her unborn child, the interest-based view tends to decide based on utilitarian standards to serve the greatest good. In a patriarchal society with a dominant view that places women as subordinate to men, the utilitarian standards in the context of abortion have the potential to affirm the dominant view rather than protect women's interests.

These three views provide the ethical basis for the pro-life and pro-choice debate on abortion. Kristin Luker, in her book, "Abortion and the Politics of Motherhood", argues that the debate between pro-life and pro-choice is actually not based on a completely contradictory view of the foetus. Rather, the debate is based on conflicting meanings of sexuality, motherhood, and gender (Luker 1985). Pregnancy is not a gender-neutral condition but is explicitly a condition associated with the female body, as is the need for abortion, which is experienced only by women (Eisenstein 1989). The debate between pro-life and pro-choice groups often lose sight of the position of women and focus more on the moral status of the unborn child (Sherwin 1991).

Moreover, according to Sprague and Greer (1998), the dichotomous nature of the debate between pro-life and pro-choice advocates leads to the search for one universal solution. As a result, it can deny the agency of the individual woman involved in the pregnancy, especially if it happens to a woman from an economically disadvantaged background. In this case, the debate about rights occurs without reference to the context in which those rights must be fulfilled, obscuring the structural factors that influence women's choice to become pregnant or to have an abortion, including lack of resources, employment discrimination, and sexual violence. In short, public discourse on reproductive rights has suffered from decontextualisation, individualisation, and class bias (Sprague & Greer 1998). Therefore, following Corrêa and Petchesky's (1994) view, the author emphasises the importance of viewing abortion from a feminist perspective as a right to sexual and reproductive health that involves four issues: integrity of the body, personhood (women as subjects), equality, and respect for diversity.

Legal Framework Governing Abortion in Nepal

Nepal is a developing country in South Asia, with a population of approximately 28 million people (CIA 2021). Women make up more than half of Nepal's population, with 80% of them living in rural areas (Shrestha 2010). Like many developing countries, access to sexual and reproductive health services for women remains a challenge. More than 70% of pregnant women have unsafe deliveries and only 23.4% of them deliver with the help of trained midwives (Shrestha 2010, pp. 133-152). As a result, this increases maternal risks, including uterine prolapse, which affects 10% of women aged 15 to 49 years (Shrestha 2010, p. 152). Therefore, abortion becomes an option for women to avoid physical, mental, and even economic problems.

In terms of abortion law, Nepal has decriminalised abortion since 2002. The decriminalisation is one of the most notable achievements of human rights advocates since the country's transition to democracy in 1990 (Center for Reproductive Rights 2021). In addition, reproductive rights for women have also been recognised as fundamental rights in the Interim Constitution (The Interim Constitution of Nepal 2063 (2007)). Despite the legal framework guaranteeing women's rights to abortion, the exercise of these rights remains a challenge, especially for rural women who are financially excluded as safe abortion is costly. Often, such services are not available in their area, and up to 27% of maternal deaths are due to unsafe abortion (ARROW 2008). Financial circumstances and lack of access to safe abortion services are the causes of rural women undergoing unsafe abortions.

Further development of the legal framework relating to abortion has resulted from the case of Lakshmi Dhikta v Nepal (2007). Lakshmi Dhikta was a woman from a poor family in the western region of Nepal and she already had five children when she became pregnant for the sixth time. She and her husband Udhav realised that having another child in the family would be financially challenging and would have a significant impact on Lakshmi's health. Hence, they sought an abortion at a government hospital. The hospital asked them to pay a fee of Rs 1,130 to do so, but Lakshmi and Udhay did not have enough money to pay the cost.

The case of Lakshmi Dhikta v. Nepal was filed with the Supreme Court of Nepal on 22 February 2007 as a public interest litigation filed by the Forum for Women, Law and Development (FWLD), pro-public and a group of human rights lawyers. The Centre for Reproductive Rights provided support in developing the case, drafting the petition, and then submitting a memo to the Supreme Court of Nepal. On 20 May 2009, the Supreme Court ordered the government to take the following steps to ensure women's access to safe and affordable abortion services, namely: (1) enact a comprehensive abortion law;

(2) expand and decentralise abortion services to ensure broad access to safe and legal abortion; (3) establish a government fund to cover abortion costs for poor women; and, (4) establish awareness programmes to educate the public about the misperceptions of abortion in society.

Finally, to implement the judgement, the 2018 Safe Motherhood and Reproductive Health Rights Act was enacted. Specifically, safe abortion is regulated in Article 15 of the Act. It states that in order to access safe abortion, several conditions must be met. Article 15 provides two timeframes for when safe abortion can be performed, namely: (1) up to 12 weeks of pregnancy, where abortion can be performed with the consent of the pregnant woman only; and (2) up to 28 weeks of pregnancy, where abortion can be performed with the consent of the pregnant woman with the following additional conditions:

a) When a licensed medical officer informs that the pregnancy may endanger the life, physical, or mental health of the pregnant woman;
b) In cases of pregnancy resulting from rape or incest;
c) If the pregnant woman is infected with a virus that damages the immune system (HIV) or suffers from a similar incurable disease.
d) If, in the opinion of the health care provider involved in the treatment, there is foetal impairment such that the foetus is unlikely to survive or is unlikely to survive after birth or is born with a specific condition due to genetic abnormalities or other reasons.

Based on this provision, at least two things can be learned. Firstly, the philosophical underpinnings of Article 15 of the Act attempt to find a common ground between the pro-life and pro-choice debates. The Act is not dictated by contractarianism, which justifies abortion on the basis that the foetus does not have any rights (pro-choice view), or by the intrinsic value perspective, which holds that the foetus is a living being with a purpose in life and that its human potential should be respected by others, including its parents (pro-life view). Nepal's abortion law considers both the interests of the woman as a subject with the moral standing to make her own choices and the moral value of the unborn child. As such, the law places time limits on when a safe abortion can be performed, taking into account the consequences for both the woman and the unborn child. Therefore, the philosophical stance taken by this law is a substantial moral value that is more likely to be influenced by utilitarianism. Secondly, from a human rights perspective, this law should be seen as Nepal's attempt to fulfil its human rights obligations as mandated by international human rights instruments. In the context of the right to sexual and reproductive health, there are several relevant rights including the right to life, the right to health, the right to be free from cruel, inhuman, and degrading treatment, the right to equality and non-discrimination, and the right to plan a family.

Legal Framework Governing Abortion in Indonesia

According to data from the Ministry of Health, there were 6,856 maternal deaths in Indonesia in 2021. This figure increased from the previous year, which was 4,197 in 2019 (KEMENPPPA 2022). In other words, the maternal mortality rate (MMR) in Indonesia is still in the range of 305 per 100,000 live births. This number is still high as Indonesia's target in accordance with the principles of sustainable development is to reduce to 183 MMR per 100,000 live births (Rokom 2023). The Indonesian Family Planning Association (*Persatuan Keluarga Berencana Indonesia, PKBI*) consistently reports on their consultation data that every day there are 20 women who experience unwanted pregnancies, 75 per cent of whom are married and do not want to have more children due to economic and health reasons (Carolina 2019). However, maternal mortality data do not explicitly mention abortion in Indonesia. While it is difficult to find comprehensive data on abortion in Indonesia in general, a study conducted by the Centre for Health Studies, University of Indonesia reveals that in 2000 alone, there were an estimated 2 million cases of abortion in Indonesia (Guttmacher Institute 2008). Another study conducted by the Guttmacher Institute reports that in 2018, there were 1.7 million cases of abortion in six provinces on the island of Java (Guttmacher Institute 2020).

In the context of Indonesian law, there are at least three instruments that regulate abortion: the old Penal Code (which remains valid to date), the Health Law, and the new Penal Code that will enter into force in January 2026 (Table 1). According to Article 346 of the old Penal Code, abortion, defined as "to abort or to kill the womb", is a crime and a woman who intentionally aborts her pregnancy or solicits another person to do so, shall be punished by a maximum imprisonment of four years. The crime of abortion in the old Penal Code was absolute as no exceptions were made to the circumstances under which abortion was permissible. In this context, the Penal Code is positioned as a general law (*lex generalis*) so that a

more specific law (*lex specialis*) concerning abortion, Law No. 36/2009 on Health, can be enforced. As a *lex specialis*, Article 75(1) of the Health Law states that abortion is generally illegal, but there are exceptions in Article 75(2) of the Law in some circumstances - in the case of medical emergencies, the pregnancy may threaten the life and health of the mother and in the case of rape, which is allowed up to six weeks pregnancy. Therefore, abortion is legal under these two circumstances.

Table 1. Abortion Regulations in Indonesia

Penal Code (Old)	Law Number 36 Year 2009 on Health	Law Number 1 Year 2023 on Penal Code (New)
Article 346 Any woman who with deliberate intent causes or lets another cause the drifting off or the death of the fruit of her womb, shall be punished by a maximum imprisonment of four years.	**Article 75** (1) People are prohibited to carry out abortion. (2) Prohibition as intended in paragraph (1) may be exceptional based on: (a) indication of medical emergency detected as of the early age of pregnancy, either those threatening the life of the mother and/or fetus, those suffering from serious genetical disease and/or inviable deformity, or those unfixable so that troubling the infant to live outside the womb; or (b) pregnancy due to rape that may cause psychological trauma to the victim; (3) Measures as intended in paragraph (2) may only be carried out following counseling prior to measures and ended with counseling post measures by competent and authorized counselor. (4) Further provision concerning indication of medical emergency and rape, as intended in paragraph (2) and paragraph (3) provided for in a Government Regulation.	**Article 463** (1) Any woman who has an abortion shall be punished by a maximum imprisonment of four years. (2) The provision as referred to in paragraph (1) shall not apply in the event that the woman is a victim of a crime of rape or other crimes of sexual violence resulting in pregnancy whose gestational age does not exceed 14 (fourteen) weeks or has an indication of medical emergency.
Article 347 (1) Any person who with deliberate intent causes the drifting off or the death of the fruit of the womb of a woman without her consent shall be punished with a maximum imprisonment of twelve years. (2) If the fact results in the death of the woman, he shall be punished by a maximum imprisonment of fifteen years.	**Article 76** Abortion as intended in Article 75 may only be carried out: (a) before the pregnancy reaches 6 (six) weeks from the first day of the last period, except in medical emergency situation; (b) by health personnel who have expertise and authority and have certificate stipulated by the minister; (c) with the consent of the pregnant mother concerned; (d) with the consent of the husband, except rape victim; and (e) in health service provider which satisfies the requirements stipulated by the Minister.	**Article 464** (1) Any person who performs abortion on a woman: (a) with the consent of the woman, shall be punished by a maximum imprisonment of 5 (five) years; or (b) without the consent of the woman, shall be punished by a maximum imprisonment of 12 (twelve) years. (2) If the act as referred to in paragraph (1) letter a results in the death of the woman, the person shall be punished by a maximum imprisonment of 8 (eight) years. (3) If the act as referred to in paragraph (1) letter b results in the death of the woman, the person shall be punished by a maximum imprisonment of 15 (fifteen) years.

Penal Code (Old)	Law Number 36 Year 2009 on Health	Law Number 1 Year 2023 on Penal Code (New)
Article 348 (1) Any person who with deliberate intent causes the drifting off or the death of the fruit of the womb of a woman with her consent, shall be punished by a maximum imprisonment of five years and six months. (2) If the fact results in the death of the woman, he shall be punished by a maximum imprisonment of seven years.	**Article 77** The Government shall be obliged to protect and prevent woman from abortion practice as intended in Article 75 paragraph (2) and paragraph (3) which is of non-quality, unsafe, and irresponsible and against religious norms and the provisions of statutory regulations.	**Article 465** (1) Doctors, midwives, paramedics, or pharmacists who commit criminal offences as referred to in Article 464, the punishment may be increased by one third (1/3). (2) Doctors, midwives, paramedics, or pharmacists who commit criminal offences as referred to in paragraph (1) may be sentenced to additional punishment in the form of deprivation of rights as referred to in Article 86 letters a and f. (3) Doctors, midwives, paramedics, or pharmacists who perform abortion due to an indication of medical emergency or on a victim of crime of rape or other crimes of sexual violence resulting in pregnancy as referred to in Article 463 paragraph (2), shall not be punished.
Article 349 If a physician, midwife or pharmacist is an accomplice to the crime in article 846, or is guilty of or is an accomplice to one of the crimes described in articles 847 and 848, the sentences laid down in said articles may be enhanced with one third, and be may be deprived of the exercise of the profession in which he commits the crime.	**Article 194** Anybody who is intentionally conduct abortion which are not conform to the provision as referred to in Article 75 shall be convicted with imprisonment at the longest 10 (ten) years and fine at the most Rp. 1,000,000,000.00 (one billion Rupiah).	

Source: Penal Code; Law No. 36 Year 2009 on Health; Law No. 1 Year 2023 (New Penal Code)

Historically, the process of passing the Health Law has been a long one. The Bill was first initiated in 1999 when abortion emerged as a right to reproductive health, shortly after the ratification of the International Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment by President B.J. Habibie. This condition gave hope to women's rights activists to push for the Health Bill to become law to replace Health Law No. 23/1992. The Bill, which provided a new perspective in viewing abortion more as a reproductive health issue to save the mother's life rather than a crime issue, faced opposition. Opponents from religious groups described the Bill as an agenda that brought Western values to legalise abortion, which is contrary to religious values. After much debate, the Bill was approved on 14 September 2009 and passed on 13 October 2009.

Although the new Health Law was finally enacted, there is still some vagueness towards abortion in Indonesia. Article 76 outlines "the conditions under which abortion is permissible" and indicates that "abortion may be performed up to six weeks after the first day of the last menstrual period except in medical emergencies and shall be with the consent of the woman and her husband, except in cases of rape". This article is problematic for two reasons. Firstly, the time allowed for abortion for rape victims is very short, which is before six weeks pregnancy. This ignores the fact that rape victims find it difficult to open up and share their experiences because of the stigma attached to them in society. They also need more time to move beyond their trauma. Data from *Lentera Sintas Indonesia* in 2016 also showed that 93% of rape survivors did not report that they were raped (Asmarani 2016), let alone to say that they were pregnant as a result of the rape. Rape that causes pregnancy in the victim,

according to a report from the Global Justice Centre entitled "The Right to an Abortion for Girls and Women Raped in Armed Conflict" in 2011, can cause grief, anger, fear, anxiety, shame, and suffering (Global Justice Centre 2011). Therefore, the law should not restrict rape victims from having abortions to avoid unsafe abortions that can cause serious problems for the mother's health and in extreme cases, death. Secondly, because the emergency conditions require the consent of the woman as well as the permission of the husband. This shows that women are still not considered as full and independent moral and legal subjects because they still need authorisation from their husbands.

In addition, Article 77 states that: "The Government shall be obliged to protect and prevent woman from abortion practice as intended in Article 75 paragraph (2) and paragraph (3) which is of non-quality, unsafe, and irresponsible and against religious norms and the provisions of statutory regulations. However, it is unclear what form of protection the state provides as a manifestation of its obligations other than through repressive protection through criminalisation of those who perform abortions outside the context of Article 76 (pregnant as a result of rape and pregnant with medical indications). In fact, the prevention of access to unsafe abortion should be done by providing adequate abortion services for women in need. In addition, the phrase "contrary to religious norms" is problematic because it maintains the conservative view that abortion is a matter of morality with religion being the determinant.

In January 2023, the government enacted Law No. 1 of 2023 concerning Penal Code or the New Penal Code that will enter into force three years after its promulgation (January 2026). Abortion in the New Penal Code is regulated in Articles 463, 464, and 465, which paradigmatically maintains the view that abortion is inherently a crime. However, the New Penal Code is actually more progressive than the old one because, following the Health Law, it provides exceptions in cases of rape or other forms of sexual violence, and medical indications. In addition, it extends the period for abortion from six weeks in the Health Law to 14 weeks. The New Penal Code also repeals Article 194 of the Health Law, which provides for criminal penalties for people performing abortions, so consequently, when it becomes effective, abortion provisions will refer to the New Penal Code.

Women's Position in the Context of Abortion in Nepal and Indonesia

To compare the abortion laws in Nepal and Indonesia, the author used Corréa and Petchesky's analytical framework of four ethical foundations in the context of women's sexual and reproductive health rights, namely: (1) integrity of the body; (2) personhood (women as subjects); (3) equality; and (4) diversity. Here, the author will assess the degree to which these four ethical foundations are recognised in the abortion laws of both countries.

First, integrity of the body refers to the integrity of the meaning of the female body as a whole, not as a separate function or part (Corrêa & Petchesky 1994). As Julia Kristeva reiterates in Handayani, "in patriarchal cultures, the meaning of women is reduced to the function of motherhood, or in other words, women have been reduced to the function of reproduction" (Handayani 2013). In the context of abortion regulations in Nepal and Indonesia, the degree to which women's bodily integrity is recognised beyond reproductive function. This can be seen from what grounds can be used to legally obtain an abortion.

In Nepal, the decision to have an abortion must fully consider the consequences of labour and childbirth on the physical and psychological well-being of the woman and the condition of the foetus after birth. Indonesia's abortion law provides two strict grounds for legal abortion, both of which appear problematic. Law No. 36/2009 on Health, specifically Article 75(1), states that abortion can be legally performed on medical or physical grounds when there is a medical emergency related to the condition of the mother and/or baby, such as risks to the mother's health or foetal abnormalities; and on psychological grounds when the pregnancy is the result of rape, which can cause a traumatic condition for the victim. A woman whose pregnancy is physically healthy and not the result of rape cannot request an abortion on the basis of potential psychological harm, let alone on the basis of economic conditions. In addition, pregnancy resulting from incest is also a valid reason for requesting an abortion in Nepal, but it is not regulated in Indonesia. Thus, a comparison of Nepal and Indonesia in terms of recognising women's bodily integrity in the context of abortion shows that Nepal's legal framework is stronger than Indonesia's with women's psychological aspects also considered.

The second ethical foundation is that of personhood, which refers to the extent to which women are seen as

autonomous legal subjects. Here, listening to women's experiences is key to respecting their moral and legal rights, particularly the right to self-determination. Women are the primary agents and decision-makers in matters of reproduction and sexuality because they are the subjects, not just the objects, and the purpose, not just the means, of population and family planning policies (Corrêa & Petchesky 1994). Feminism looks at abortion by putting women's interests and experiences at the centre of attention. In the context of abortion, it is the pregnant woman who is the subject of primary concern. Abortion must be performed with the consent of the pregnant woman. Therefore, coerced abortion can be considered a violation of the right to be free from cruel, inhuman, and degrading treatment.

Recognition of women's personhood can be seen in the extent to which abortion services can be provided at the request of women as subjects, who have autonomy over their bodies. When looking at the abortion law in Indonesia, it is clear that the procedure to obtain a legal abortion in Indonesia is also very complicated. The process requires counselling with a competent and authorised counsellor and must be performed by skilled and certified health staff at an accredited health care provider in accordance with standards set by the Ministry of Health. In addition, another important requirement is that women seeking an abortion must obtain permission from their husbands, except in cases of rape. Such permission shows that pregnant women in Indonesia still have a weak subject position because they cannot make decisions based on their personal choices. As stated by de Beauvoir and reiterated by Arivia, men in patriarchal societies are defined as absolute subjects, while women are incidental and non-essential subjects, or in other words, women are those who are excluded (de Beauvoir 2011, p. 39; Arivia 2013, p. 30). In Nepal, women seeking abortion services do not need the permission or consent from their husbands regardless of the reason for the abortion. Thus, the degree of recognition of women's personhood in Nepal in the context of abortion appears stronger than in Indonesia.

The third foundation is equality. In this regard, abortion should be seen as part of women's reproductive health care (Van Wagner & Lee 1989). Health care providers need to recognise that abortion is a reasoned choice so that services that will be provided respect the women's choice and safeguard their physical, psychological, and emotional well-being (Sherwin 1991). In patriarchal societies, male babies are considered more valuable than female babies. Thus, abortions are more likely to be performed if the foetus is female. The Government of Nepal prohibits abortions performed based on the sex of the foetus. This is to prevent couples from choosing the sex of the baby they want, as female foetuses are more likely to be aborted. Without this prohibition, the dignity of being born a woman in a patriarchal society would continue to be degraded and ignored. Therefore, this prohibition should be seen as an attempt to address this issue and respect Article 1 of the UDHR, which recognises equal rights and human dignity. It is also Nepal's attempt to implement Article 1 of CEDAW, which places an obligation on the state to take necessary measures to eliminate discrimination against women, including discrimination against the foetus that will one day become a woman.

The fourth foundation is diversity. Women have a special right to determine the number and spacing of births, or the right to plan a family based on their social, economic, and cultural conditions and backgrounds. As stated in Article 16(1) of CEDAW, abortion should be seen as an exercise of women's rights to reproductive health and family planning and states should provide related services to fulfil these rights. In addition, in the context of abortion regulations, the time limit for abortion is an important framework for accommodating women's diverse backgrounds. In Indonesia, abortion can only be performed before six weeks of pregnancy calculated from the first day of the last menstrual period except for cases of medical emergencies Meanwhile, in Law No. 1/2023 (New Penal Code), Article 463 Paragraph 2 provides an exception for women who are victims of rape and sexual violence to have an abortion before 14 weeks of pregnancy or have an indication of medical emergency. In addition, the regulations of abortion in Indonesia assume that women are in the same position in accessing sexual and reproductive health services, obscuring the fact that there are also inequalities in vulnerability based on geography (urban/rural), class (upper middle/lower middle class), disability (non-disabled/disabled) and caste. As a result, regulations that turn a blind eye to the diversity of women's backgrounds tend not to provide consideration for abortion based on these inequalities, such as abortion for economic reasons.

Nepal has a different view of the time limit. In Nepal, for gestational age up to 12 weeks, abortion is allowed for any reason, be it psychological, medical, or financial. This provision does not exist in Indonesian legislation. Meanwhile, for gestational age up to 28 weeks, a pregnant woman can request an abortion based on medical reasons or psychological reasons as stated in Article 15

of the 2018 Safe Motherhood and Reproductive Health Act. Therefore, the time limit in Nepal is longer and more flexible than in Indonesia, and Nepal's law is also more comprehensive in providing reasons for abortion.

Although Nepal's abortion law appears to be more advanced and have had a positive impact on the realisation of women's sexual and reproductive health rights in the country, further challenges remain. One of the challenges is the access to reproductive health services, including abortion facilities, which tend to concentrate in urban areas. As a result, rural women still face difficulties in accessing them (Samandari et al. 2012). Private health providers are still allowed to charge fees for services that rural women may not be able to afford. For example, a patient has to pay around US$20 for an abortion (Ju Wu et al. 2017), which is relatively high as 68% of Nepalese live on less than US$2 per day (CREHPA 2006). With the lack of public health care providers in rural areas, a woman with an unwanted pregnancy has limited options, and undergoing unsafe abortion tends to be the most affordable option. Therefore, there is a need to ensure reproductive health facilities are equally available and established in every region so that women's reproductive rights can be enjoyed by all Nepali women regardless of class, ethnicity, religion, or geography.

Closing

The realisation of women's sexual and reproductive health rights remains a challenge, especially when it comes to the most controversial issue of all: abortion. Although women's deaths caused by unsafe abortions continue to be a concern, the prohibition of abortion in various countries is still upheld for moral and religious reasons. Through a comparative approach by comparing the Indonesian and Nepalese regulations, the author uses a feminist perspective as an analytical framework in looking at the issue of abortion, which consists of integrity over the body, personhood, equality, and diversity of women. From this ethical framework, the author argues that Nepal appears to recognise women's bodily integrity, personhood, equality, and diversity more strongly in its abortion law. This is demonstrated by the fact that the exceptions to abortion are more comprehensive, including consideration of the woman's economic, social, and psychological conditions, a longer timeframe, and no need for the husband's permission or consent. Thus, abortion is seen as a woman's right to sexual and reproductive health. Woman is a subject who makes her own choices. Indonesia's regulation is weaker, as women are only allowed to request abortion on two grounds: medical indication and pregnancy resulting from rape or other forms of sexual violence. In the case of medically-indicated abortion, services can only be provided if permission is obtained from the husband. In addition, Indonesia's abortion law ignores the different positions of women that affect access to services, as economic and psychological conditions cannot be used as grounds for abortion. Therefore, advances in Nepal's legal framework for abortion should inspire Indonesia to regulate abortion in favour of women.

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