NEPAL

Safe Motherhood and Reproductive Health Rights Act, 2018

CENTER FOR REPRODUCTIVE RIGHTS

FORUM FOR WOMEN, LAW AND DEVELOPMENT
1995
Working for non-discrimination and equality
FWLD

Unofficial Translation

Safe Motherhood and Reproductive Health Rights Act, 2018

CENTER FOR REPRODUCTIVE RIGHTS

FORUM FOR WOMEN, LAW AND DEVELOPMENT 1995

Working for non-discrimination and equality

FWLD

Safe Motherhood and Reproductive Health Rights Act, 2018

Date of Authentication:

September 18, 2018 (2075/06/02 B.S)

Act No. 9 of the year 2075 B.S.

An Act enacted to provide for matters related to safe motherhood and reproductive health rights

Preamble: Whereas, to respect, protect and fulfill woman's safe motherhood and reproductive health rights as guaranteed in the Constitution of Nepal, it is expedient to make necessary provisions relating to safe, quality, affordable and accessible maternal and reproductive health services, the Federal Parliament enacted this Act.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as "Safe Motherhood and Reproductive Health Rights Act, 2018."

   (2) This Act shall come into force immediately.

2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,

   (a) "Emergency obstetric care" means the services available twenty-four hours to manage any complications during pregnancy, delivery or post-partum period.

(b) "Basic emergency obstetric care" means basic services such as administering antibiotics, magnesium sulfate or oxytocin, removal of retained placenta, assisted vaginal delivery, including with the use of medical equipment (vacuum), and removal of retained products from uterus following abortion.

(c) "Adolescents" means individuals between the ages of ten to nineteen years.

(d) "Abortion" means the spontaneous or induced termination of fetus from uterus before it becomes capable of natural birth.

(e) "Contraception" means the measure to prevent pregnancy by obstructing the common process of ovulation, expulsion of sperm, or implantation of the ovum.

(f) "Contraceptive methods" means hormone-based or other method of contraception.

(g) "Abortion service" means an abortion service performed in a listed health institution for abortion by a listed health service provider upon fulfilling the process in accordance with this Act.

(h) "Antenatal care service" means the service in accordance with Section 5 (of the Act).

(i) "Pregnancy" means the term from first day of the last menstrual period before conception till fetus remains in the woman's uterus.

(j) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules formulated under this Act.

(k) "Newborn essential care" means the services, including newborn care to keep them clean and warm, taking

care of the navel and eyes, breastfeeding, as well as administering necessary vaccines.

(l) "Newborn emergency care" means services relating to managing infections of newborn by administering antibiotics, including management of hypothermia as well as complications relating to respiration.

(m) "Family planning" means individual's planning on the number or spacing of children by using or not using the contraceptives.

(n) "Reproductive health" means the state of physical, mental and social wellbeing in all matters related to the reproductive system, and to its functions and processes.

(o) "Right to reproductive health" means the rights in accordance with Section 3 (of the Act).

(p) "Reproductive Health Morbidity" means any health condition adversely impacting the reproductive system as a result of reproduction, pregnancy, abortion, labor and sexual behavior, and also refers to uterine prolapse, obstetric fistula, infertility, cervical cancer as well as any other similar health conditions that affects the reproductive functioning.

(q) "Birth attendants" means trained health worker who assist pregnant woman in childbirth.

(r) "Ministry" means the ministry of the Government of Nepal that overlooks matters relating to health.

(s) "Comprehensive emergency obstetric care" means services that includes blood transfusion and surgery in addition to basic emergency obstetric care mentioned in sub-section (b).

(t) "Safe motherhood" means maternal services provided to women during antenatal, delivery and post-partum periods, in accordance with this Act.

(u) "Health institution" means hospital, nursing home, medical college or health foundation operated by government, non-government, community or private organization, and also refers to primary health center, health post or the health institution operated under any other name.

Chapter-2

Right to Reproductive Health

3. Right to reproductive health: (1) Each woman and adolescent shall have the right to obtain education, information, counseling and service relating to sexual and reproductive health.

(2) Each person shall have the right to obtain service, counseling and information relating to reproductive health.

(3) Each woman shall have the right to safe motherhood and reproductive health. Each woman shall have the right to determine the number or spacing of children.

(4) Each person shall have the right to contraceptive information and usage.

(5) Each woman shall have the right to obtain abortion services, in accordance with this Act.

(6) Each woman shall have the right to nutritious, balanced diet and physical rest during the antenatal, postnatal and reproductive health morbidity.

(7) Each woman shall have the right to essential counseling, obstetric care, and postpartum contraceptive services from a birth attendant.

(8) Each woman shall have the right to obtain emergency obstetric care, basic emergency obstetric care, comprehensive emergency obstetric care, new born essential care and new born emergency care.

(9) Each person shall have the right to affordable, acceptable and safe reproductive health services as needed during different stages of their lifecycle.

(10) Every person shall have the right to reproductive health services of their choice.

4. Confidentiality: Details related to reproductive health services received by each individual and its information shall remain confidential.

Chapter-3

Safe Motherhood and Newborn

5. Right to antenatal care service: (1) Each woman shall have a right to visit a health institution for check-up or examination to determine whether she is pregnant or not.

(2) Pursuant to sub-section (1), the concerned health institution shall provide the visiting pregnant woman the following services:

(a) At least four antenatal check-ups in case of normal pregnancy;

(b) Besides as stated in clause (a), additional health examination on advice of a physician/doctor or competent health worker;

(c) To receive appropriate counseling on health care;

(d) To receive minimum care and safety measures during pregnancy.

6. Providing obstetric care: (1) Government and community health institutions that provide obstetric care shall arrange for a competent health worker, or birth attendant or other trained health worker to provide obstetric care.

(2) Non-government and private health institutions, meeting the criteria prescribed by the Government of Nepal, shall provide respectful obstetric care.

7. Emergency obstetric and newborn care: (1) Government and community health institutions that provide obstetric care, should also provide emergency obstetric and newborn care.

(2) Non-government and private health institutions, meeting criteria prescribed by the Government of Nepal, should provide emergency obstetric and newborn care.

(3) Health institutions, referred to in sub-sections (1) and (2), unable to manage complications that arise while providing services shall as far as possible refer (the case) to government or community health institution and, if not, to non-governmental and private institutions.

(4) It shall be the duty of the concerned health institutions to manage health complications of pregnant and postpartum woman or newborn, referred in accordance with sub-section (3).

(5) Health institutions that provide emergency obstetric and newborn care shall arrange a resting place, as prescribed, for pregnant women with specific conditions.

8. **Health care of newborn:** Health institutions providing obstetric care should make arrangement for newborn health care, as prescribed.

9. **Birth registration of infants:** (1) Each health institution shall maintain record of infants born in the health institution.

   (2) On the basis of the record, referred to in sub-section (1), the health institution shall issue birth certificate stating the name of father or mother of the infant born in that health institution, to the father or mother.

   (3) Every health institution shall maintain record stating the number of infant mortality and women who have experienced miscarriage or sought abortion.

   (4) Each health institution shall maintain record in case of death of a pregnant woman seeking obstetric care in the health institution.

10. **Right to seek family planning services:** (1) Each person shall have the right to obtain information, make choice and seek other services related to family planning.

    (2) The prescribed family planning services shall be sought from the prescribed health institution.

    (3) Other provisions related to family planning shall be as prescribed.

11. **Forced family planning prohibited:** Forced family planning under duress or threat or enticement or allurement or without obtaining written consent is prohibited.

12. **Forced use of contraceptives prohibited:** Forced use of contraceptives under duress or threat or enticement or allurement or without obtaining consent is prohibited.

13. Right to maternity leave: (1) A woman working in a government, non-government or private organization or institution shall have the right to paid maternity leave for a minimum period of ninety-eight days before or after childbirth.

(2) In case the maternity leave referred to in sub-section (1) is not sufficient, a pregnant woman, with the recommendation of an expert physician shall have the right to leave without pay for a maximum period of up to one year.

(3) Government, non-government or private organization or institution shall make necessary arrangement for working women to breastfeed their infant during office hours for a period of up to two years from their birth.

(4) Even in cases of still birth or death of an infant after birth, the pregnant woman shall be entitled to leave referred in sub-section (1).

(5) A male staff of government, non-governmental or private organization or institution shall get paternity leave with remuneration for 15 days before or after the child delivery of his wife.

14. Providing additional leave: In cases where as a result of reproductive health morbidity, on the opinion of a specialized physician, a woman requires critical surgery, the government, non-government or private organization or institution where the woman is working shall provide additional paid leave of up to at least thirty days before or after such surgery.

Chapter-4
Safe Abortion

15. Seeking safe abortion: A pregnant woman shall have the right to seek safe abortion under the following conditions:

(a) Up to twelve weeks of pregnancy with the consent of a pregnant woman;

(b) Up to twenty-eight weeks of pregnancy with the consent of the concerned woman, if in the opinion of a licensed physician that if an abortion is not performed, there may be danger to the life of a pregnant woman or her physical or mental health may deteriorate or a child born will be impaired;

(c) Up to twenty-eight weeks of pregnancy with the consent of the pregnant woman in case the conception is a result of rape or incest,

(d) Up to twenty-eight weeks of pregnancy with the consent of the woman who is infected with virus that deteriorates immune system (HIV) or suffering from any similar incurable disease,

(e) Up to twenty-eight weeks of pregnancy with the consent of the pregnant woman, if in the opinion of the health service provider involved in the treatment, due to fetal impairment the fetus is likely to become non-viable or unlikely to survive after birth or become deformed due to any genetic disorder or any other reason.

16. Forced abortion prohibited: (1) Except under the conditions mentioned in Section 15, no one shall seek abortion or carry out any act knowing or believing that it may cause abortion.

(2) No one shall carry out abortion by enticing, coercing or threatening or alluring a pregnant woman.

(3) Whoever commits any of the following acts shall be deemed to have performed forced abortion:

(a) Carrying out abortion as referred to in sub-section (2),

(b) Termination of pregnancy resulting from an act of rage or hostility against a pregnant woman,

(c) Being an accomplice in committing any act/s referred to in clauses (a) and (b).

(4) While conducting abortion, if there is a livebirth and immediate death, it shall be deemed to be abortion for the purpose of this Section.

17. Sex-selective abortion prohibited: (1) No one shall commit or cause to commit any act identifying sex of fetus.

(2) By using intimidation or fear or duress or threat or enticement or allurement, no pregnant woman shall be coerced or compelled to identify the sex of the fetus.

(3) As referred to in sub-sections (1) and (2), no abortion shall be carried out after identifying sex of the fetus.

18. Safe abortion services: (1) In accordance with Section 15, a listed health service provider shall provide safe abortion services to a pregnant woman in a listed health institution that fulfills prescribed standards.

(2) Appropriate technology and process of the service to be provided pursuant to sub-section (1) shall be as prescribed.

(3) A pregnant woman seeking safe abortion services shall give consent to a listed health institution or listed health service provider, in prescribed format.

(4) Notwithstanding anything contained in sub-section (3), in respect of a woman with unsound mind, or unable to give the consent at the time of seeking services or who has not completed eighteen years of age, consent may be given by her guardian or custodian.

(5) Notwithstanding anything contained in sub-section (4), taking into account her best interest, safe abortion services shall be provided to a pregnant woman below eighteen years of age.

19. Confidentiality to be maintained: (1) A listed health institution or listed health service provider shall maintain the confidentiality, of information and documents, relating to reproductive health counseling and services provided to a pregnant woman.

(2) Notwithstanding anything contained in sub-section (1) the record of such information, documents and counseling services may be provided under following conditions:

(a) In case information is demanded by an investigation officer or court in course of investigation and hearing of any lawsuit;

(b) To share (such information) without revealing the identity of woman for the purpose of studies and research relating to safe abortion;

(c) In case the concerned woman demands the record thereof.

Chapter-5

Reproductive Health Morbidity

20. Right to obtain reproductive health morbidity care: (1) Each woman shall have the right to get examined, receive counseling and treatment relating to reproductive health morbidity from a health institution.

(2) While providing services in accordance with sub-section (1), it is the duty of the concerned health institution or the health worker to provide information relating to morbidity and care to be taken following surgery and the risk likely to arise, in a manner that it is understood.

21. No one shall be displaced: No one shall be or caused to be divorced or expelled from home or displaced as a result of reproductive health morbidity.

Chapter-6

Budget Allocation and Grants for Motherhood and Reproductive Health

22. Allocation of grant amount: (1) The Government of Nepal shall allocate grant amount in its yearly budget for motherhood and reproductive health services to each Local Level (government).

(2) The Provincial Government, in accordance with the Provincial law, shall allocate certain amount in its budget every year as grant for motherhood and reproductive health services to each Local Level (government).

(3) The concerned Local Level (government) shall, as prescribed, spend the amount allocated in accordance

with sub-sections (1) and (2), to provide motherhood and reproductive health services for economically weak women.

23. Local Level (government) to allocate budget: (1) The Local Level (government) shall allocate essential budget for motherhood and reproductive health services in its annual budget.

(2) While allocating budget in accordance with sub-section (1), it shall be in a manner that government or community health institutions providing motherhood and reproductive health service receive it.

24. Reproductive Health Coordination Committee: (1) A Reproductive Health Coordination Committee shall be established to provide necessary recommendations to the Government of Nepal for developing policies, plans and programs relating to safe motherhood and reproductive health as follows:

(a) Secretary, Ministry of Health and Population - Chairperson

(b) Joint-secretary, Ministry of Women, Children and Senior Citizens - Member

(c) Joint-secretary, Ministry of Education, Science and Technology - Member

(d) Director General, Health Service Department - Member

(e) Representative, Nepal Medical Council - Member

(f) Representative, Nepal Nursing Council - Member

(g) Representative, Nepal Health Professionals' Council - Member

(h) Legal Officer, Ministry of Health and Population - Member

(i) Two representatives including one woman nominated by the Ministry from among the professional institutions/ persons conducting studies and research or providing service in the field of reproductive health and reproductive right - Member

(j) One representative of Nepal Health Volunteers' Association assigned by the Ministry - Member

(k) Director, Family Welfare Division, Health Service Department - Member-secretary

(2) The Coordination Committee may invite an expert working in the field of reproductive health and reproductive rights to a meeting, as necessary.

(3) The procedures relating to the meeting of the Committee shall be as determined by the Committee.

Chapter-7

Offences and Punishments

25. Offence deemed to be committed: Whoever commits any of the following acts shall deemed to have committed an offence under this Act:

(a) Depriving obstetric care services, as referred to in Section 5;

(b) Denial by a health institution providing obstetric care services to provide such services as referred to in Section 6;

(c) Pursuant to Section 7, referring or causing referral to another health institution deliberately even in cases where treatment was possible in their own health institution;

(d) A health institution does not provide birth certificate pursuant to Section 9;

(e) Forceful family planning, as referred to in Section 11;

(f) Forceful use of contraceptive, as referred to in Section 12;

(g) Abortion (conducted), as referred to in Section 16;

(h) Commission of any act of identification of sex of the fetus, in contravention with sub-sections (1) and (2) of Section 17;

(i) Abortion conducted after sex determination, as referred to in sub-section (3) of Section 17;

(j) Disclosure of confidentiality or caused to be disclosed, in contravention with sub-section (2) of Section 19;

(k) Displacing or caused to be displaced in contravention with Section 21,

(l) Discriminating in contravention with Section 29.

26. Punishment: Whoever commits any act that is an offence under Section 25 shall be liable to the following punishments, depending upon the degree of the offence committed:

(a) Imprisonment up to six months or fine up to fifty thousand rupees or both for committing or abetting to commit the crime referred to in clauses (a), (b), (c), (d) and (l);

(b) Imprisonment between three months to six months and fine up to fifty thousand rupees for committing or

abetting to commit the crime committed referred to in clauses (e) and (f);

(c) Punishment in accordance with Section 188 of the National Penal (Code) Act, 2074 for committing or abetting to commit the offence referred to in clauses (g), (h) and (i);

(d) Fine up to fifty thousand rupees for committing or abetting to commit crime as referred to in clause (j);

(e) Imprisonment of up to one year or fine up to one hundred thousand rupees or both for committing or abetting to commit the crime committed as referred to in clause (k).

27. Provisions of compensation: A victim of an offence committed under this Act shall receive a reasonable amount of compensation from the perpetrator.

Chapter-8
Miscellaneous

28. Disabled-friendly service: Services under this Act, including family planning, reproductive health, safe motherhood, safe abortion, emergency obstetric care and newborn care, reproductive health morbidity, shall be adolescent and disabled friendly.

29. Discrimination prohibited: No one shall be discriminated in their right to access services, including family planning, reproductive health, safe motherhood, safe abortion, emergency obstetric care and newborn care, reproductive morbidity, menstrual care on the ground of origin, religion, color, caste, ethnicity, sex, community, occupation, business, sexual and gender identity, physical or health condition,

disability, marital status, pregnancy, creed, state of being suffering from any disease or infected with virus or vulnerable to such infections, state of reproductive morbidity, personal relationship or any other such grounds.

30. Provision relating to safe/protection house: The Federal, Provincial and Local Level (governments) shall coordinate to make necessary arrangement of a Safe/Protection House to safeguard reproductive health of women who are mentally challenged, neglected by family or relatives, or victims of rape.

31. To issue directives: (1) The Ministry may issue necessary directives to health institutions for availability of reproductive health services.

(2) It shall be the duty of the concerned health institutions to comply with the directives issued as referred to sub-section (1).

32. Service charge: (1) The government health institutions or the health institutions that receive grants from government shall provide free reproductive health services.

(2) Private, non-government and community health institutions may charge (fees) for providing reproductive health service, as prescribed.

(3) Notwithstanding whatever has been written in sub-section (2), private, non-government and community health institutions, and health workers shall make services affordable, and provide free services (quota) to persons unable to pay service charge.

33. Maternity allowance: The Government of Nepal shall provide maternity allowance to destitute woman who give birth, as prescribed.

34. **Saving of acts done in good faith:** Notwithstanding anything contained elsewhere in this Act, no legal action shall be taken against any health institution and health worker for any reproductive health services provided in good faith.

35. **Adjudicating authority:** (1) District Court shall have the jurisdiction to hear and dispose case involving offences under this Act.

    (2) If a person is not satisfied with the punishment or order made by District Court, in accordance with sub-section (1), s/he may appeal in the concerned High Court.

36. **State case:** (1) The Government of Nepal shall be the plaintiff in cases pursuant to Section 25.

    (2) The cases referred to in Section 25 shall be deemed included in Schedule-1 of National Penal Procedure (Code) Act, 2074.

37. **Statute of limitation:** For offences committed under this Act, the statutory limitation to file a complaint shall be six months from knowledge that crime has been committed.

38. **To be in accordance with prevailing law:** It shall be in accordance with this Act on the matters provided for in this Act and it shall be in accordance with prevailing law on the matters not dealt with herein.

39. **Power to formulate rules:** The Government of Nepal may formulate necessary Rules in order to implement this Act.

40. **Power to issue directives:** The Ministry may, subject to this Act and Rules framed thereunder, frame and implement necessary directives.

Center for Reproductive Rights (CRR)
Kalika Tower, Baluwatar
Kathmandu, Nepal
Website : www.reproductiverights.org

Forum for Women, Law and Development (FWLD)
72, Adarsha Marg, Thapathali
P.O. Box 26538, Kathmandu, Nepal
Phone: 42566415, 4242683
Email: fwld2013@gmail.com
Website : www.fwld.org
Youtube: youtube.com/fwldofficial