

# **A**ctivities on

*Release of Women Imprisoned on Charges  
of Abortion and Abortion Related Offences*



Forum for Women, Law and Development (FWLD)

2005

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ACTIVITIES ON

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**RELEASE OF WOMEN IMPRISONED ON  
CHARGES OF ABORTION AND ABORTION RELATED OFFENCES**

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# A C T I V I T I E S

## on Release of Women Imprisoned on Charges of Abortion and Abortion Related Offences

### Introduction

One of the most significant advances in the definition and understanding of human rights has been the recognition of women's rights as human rights. Women's right to decide whether, when and how to have children-regardless of nationality, class, age, religion, disability, sexuality, or marital status-in the social, economic and political conditions ensure women's right to reproductive health. Reproductive health right includes "access to safe, effective contraception and sterilization; safe legal abortion, safe women-controlled pregnancy and childbirth; safe effective treatment for the causes of infertility; full information about sexuality and reproduction, about reproductive health and health problems, and about the benefits and risks of drugs, devices, medical treatment and interventions; and good quality, comprehensive reproductive health services that meet women's need and are accessible to all women". These health needs and rights are inseparable from women's human rights to ensure self-determination and to have control over their own bodies.

A major barrier for women to achieve of the highest attainable standard of health is inequality, both between men and women and among women in different geographical regions, social classes and indigenous and ethnic groups. Nepal is the country where maternal mortality rate is highest in the world and more than 50 percent of the maternal mortality rate is due to unsafe abortion. In Nepal as a result of the continuing advocacy efforts from civil society and pressure from the international community abortion was legalized under certain circumstances on September 26,2002 which was before criminalized under any circumstances.

Liberalizing abortion is the first step recognizing women's right to reproductive health. However, legalization alone cannot ensure reproductive health right unless women are empowered to exercise the rights to access safe, legal and affordable abortion. Even after the legalization of abortion in the country, many challenges remain such as socio-legal challenges and related to infrastructures, information, services and availability of equipments etc. Also the present law is silent on the issue of women who are still in prison on charges of abortion and abortion related offences by previous legislation.

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## Why Advocacy To Release Women

Women's secondary status in family and in the society, discriminatory cultural and religious traditions as well as poverty has caused an adverse effect on the health of women. Moreover, the gender biased laws and weak enforcement of laws cause further violations of women's reproductive health rights. "Women in Prison in Nepal for Abortion" a study conducted by CREHPA stated that of the total 406 female inmates serving prison terms during its study period the number of women convicted for infanticide/abortion was 80. Majority of women prosecuted in the aforementioned charges were illiterate. Similarly according to the research on "Abortion in Nepal: Women Imprisoned" conducted by Forum for Women, Law and Development (FWLD) in collaboration with Center for Reproductive Law and Policy (CRLP) 2001, there were 65 women prosecuted on charges of abortion and abortion related offences.

The study also collected and compiled profiles of 57 women from the 26 districts. Among the women imprisoned on charges of abortion and abortion related offences, 59.65 percent women prisoners and detainees had never been in school, 47.37 percent of them had no legal assistance at their trial and almost all the women are from the poor families who have no financial support for the follow-up of their cases. This clearly shows that the women prosecuted are only poor and illiterate and no single woman who is educated and from financially strong family is prosecuted. The study also found the children's are with their mother's in prison. These children are forced to be in prison with no reason and as a result their right to education, right to live with dignity, right to parental love is denied.

**When access to safe abortion services are denied, many women die every year and many suffer severe physical health consequences due to unsafe abortion, and many were forced to continue their pregnancy and were finally prosecuted and convicted for infanticide and have to spent their most productive years of their life in prison.**

When access to safe abortion services are denied, many women die every year and many suffer severe physical health consequences due to unsafe abortion, and many were forced to continue their pregnancy and were finally prosecuted and convicted for infanticide and have to spent their most productive years of their life in prison. As these women's were in prison due to the consequences of the criminalization of abortion in Nepal therefore in this circumstances efforts are needed to release women imprisoned on charges of abortion and abortion related offences and facilitate them for the rehabilitation.

### ACTIVITIES CARRIED OUT

Even though FWLD and other NGO's were advocating to release women imprisoned on charges of abortion and abortion related offences and also provide legal assistance after the legalization of abortion in Nepal. Government of Nepal also recognized it as their priority issue. Communicating with the government and pressurizing for their release and some of the activities carried out afterwards are described here:

#### Participated in the rally

After the legalization of abortion in Nepal , it started as a movement for the release from International Women's Day (March 8, 2003) marking the beginning of the advocacy by FWLD for the release. FWLD

participated in the rally demanding for release of women imprisoned for abortion and abortion related offences. The main slogan for the International Women's Day was "Release Women Imprisoned on charges of Abortion and Abortion related Offences." Government of Nepal also recognized it as their priority issue. Communicating with the government for their release

**Outcome:** Support and solidarity from other concerned stakeholders showing commitment towards the issue.

### Publication of Appeals

An appeal was published in the leading newspapers on the same day (March 8, 2003) appealing to His Majesty's Government for the release of women imprisoned on charges of abortion and abortion related offences. It played an important role in making people aware about the social, economical, financial and the educational status of women imprisoned in the above said charges. On the other hand the publication also helped for the wide dissemination of the information that women are still in prison for the crime, which is no longer a crime in Nepal and there is no threat to the society by these women. The major focus of appeal was the need to take immediate action by the government and end the continue violation of the right of the women and maintain the standards of justice prescribed by international laws and guaranteed under Nepali laws.



**Outcome:** Realization of problem and created sensitization to release women from prisons.

### Experts Consultation Meeting

A consultation meeting with the experts for the preparation of arguments was held at FWLD Office on May 7, 2003 which was participated by Former Judge, delegates from the government agency, lawyers, Associate Professor, jailors and research team. In the same meeting memorandum for their release was prepared on the behalf of women who are in prison for the said charges.

The major arguments discussed in the meeting were:

- The act of criminalizing abortion is *prima facie* a violation of human rights,
- Nepali women are condemned to punishment even in cases of abortion,
- Women are not able to exercise the rights, which accrue to them as an outcome of the principle of presumption of innocence,
- Proceeding of the cases is against the fundamental concept and principles of human rights,
- Illogical to keep a person under detention for a crime, which is no longer, considered dangerous for the general people and
- Release of women according to Prison Regulation, 2020.

**Outcome:**

It helped in bringing all relevant legal arguments together for building strong appeal for the release of women.

## Follow-up Meeting

Follow-up meeting of consultation meeting was organized at FWLD office on May 8, 2003 for the finalization of the legal arguments and memorandum, suggestions and recommendations received during the follow-up consultation were incorporated while finalizing the draft arguments and memorandum.

## Provided Recommendations in the Draft Procedural Order

In the same meeting (May 8,2003) the Procedural Order for the safe and accessible abortion services, which was prepared by the Health Ministry of His Majesty Government, was discussed.

Following main points were discussed:

- The present terms and conditions do not define the definition of abortion, miscarriage, stillbirth, infanticide, fetus and embryo,
- Does not include issues relating to privacy and confidentiality,
- Does not include procedure (use of medicine as a means for abortion),
- Use of the term qualified medical practitioner instead of medical practitioner,
- Need of definition of the safe abortion,
- Use of the term foetus instead of child,
- Does not address the issue of fees to be affordable,
- Does not address in private clinic fees should be fixed and finally
- Does not define calculation of gestation period.

These recommendations were incorporated in the Procedural Order and a three-tabled amended proposal was prepared and submitted to the concerned government agencies, which includes Health Ministry and Ministry of Law, Justice and Parliamentary Affairs.

**Outcome:**

Finalization of legal arguments, memorandum and comments on the Procedural Order. Three tabled amended proposal was submitted to the concerned agencies.

## Update the Number of Women in Prison

FWLD updated the number of women imprisoned on charges of abortion and abortion related offences by May 2003. It helped in identifying the number of district prisons and the number of women imprisoned on the above said offences in different parts of the country.

**Outcome:**

59 women (1 on bail) were found to be prosecuted on the charges of abortion and abortion related offences in 24 prisons of 23 districts.

## Orientation to Lawyers and Media Persons

An orientation meeting with the lawyers, media persons and researchers was held at the FWLD office on May 23, 2003. The main objectives of the meeting was to identify districts to be visited by an individual; to inform the district field visitor the number of women prisoner/detainee to be interviewed; collection of the signatures of women prisoners/detainees on the memorandum; to submit the request letter to the jailers requesting them to recommend and give priority to those women who are imprisoned for abortion or abortion related offences while providing names to the Department of the Prison Management on the basis of Rule 29 of the Prison Regulation, 2020.

On the other hand they were asked to distribute materials related to the amended abortion law and to collect information from the government agencies, district court, public attorney office and other related agencies.

**Outcome:** Provided general information to the field visitors on the number of women to be interviewed, information to be collected and the districts to be visited.

## District Field Visit

The identified lawyers, media persons and the researchers visited the identified and allocated districts in the month of June 2003 with the following objectives;

- to update the number of women imprisoned on charges of abortion and abortion related offences,
- to collect the signature of the women prisoners/detainees on the memorandum,
- to collect testimonies of prisoners/detainees,
- to collect the case file of prisoners/detainees,
- to distribute the materials related to the amended abortion law to the concerned stakeholders,
- to classify the nature of case,
- to identify the status of women,
- to sensitized the law enforcers on the amended abortion law,
- to identify cases in need of legal representation and
- to build network and coordination with the district stakeholders.

**Outcome:** Helped to gather information from individual women. In addition case files with detailed information was collected. Information on amended abortion law has disseminated to the law enforcers as well as to the general people and collection of information from the concerned agencies related to the issue.

## ACTIVITIES CARRIED OUT BY THE DISTRICT FIELD VISITORS

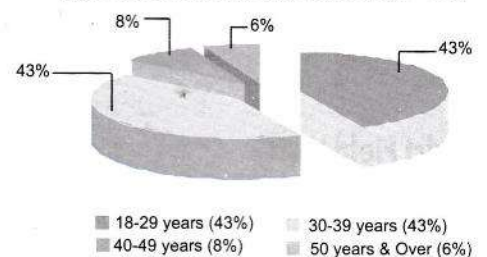
### Interview with Women Prisoners/Detainees

Scheduled interviews were conducted with the woman detainees and prisoners who were in prison on the charges of abortion and abortion related offences in different parts of the country. The interview was conducted with open and close ended questionnaire which was developed by the group of experts in order to collect the detailed information from the women, and also to know other necessary arrangements to be made after their release from prisons.

#### Age of women prisoners/detainees

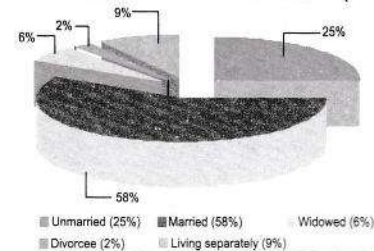
Majority of women prisoners/detainees prosecuted for abortion and abortion related offences were between the age of 18-39 years of age.

Age of Women Prisoner/Detainee (N = 53)



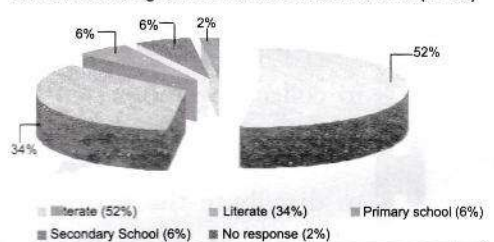
#### Marital Status

Marital Status of Women Prisoner/Detainee (N = 53)



Among the women prosecuted 58% of them were married, 9% were living separately, 25% were unmarried whereas 2% were divorcee.

Educational Background of Women Prisoner/Detainee (N = 53)



#### Educational Background

The education level is found to be very low among the women. Only 34% of them were literate and 6% of them had primary and secondary level education.

#### Outcome:

The process helped to gather information on the status of women prosecuted for abortion and abortion related offences.

### Collection of Signatures on the Memorandum

Apart from interviewing the women detainees and prisoners their signatures on the memorandum\* was collected in order to submit it to His Majesty's the King for their general pardon.

#### Outcome:

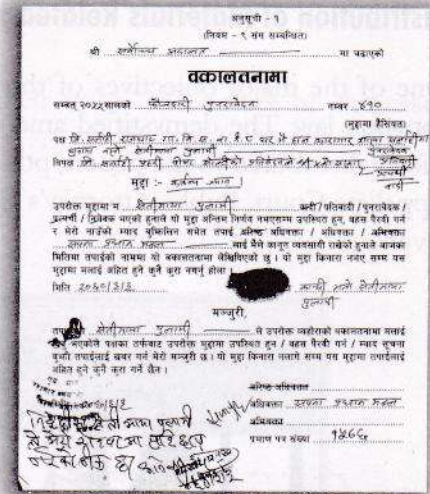
Helped to collect the signatures of all women's voice together to create pressure for their release through general pardon.

\* Due to confidentiality reason, we are unable to publish women's name and their signatures.



## Taking Signature or Thumbprints on Authorization for Pleading (Wakalatnama)

District field visitors also took the thumbprints (in lieu of signatures) indicating the women's acceptance of FWLD as their legal representative as well as on an "intent to appeal" form. This helped us in representing the women's cases before the Supreme Court and also the cases in the District Court and Appellate Court of Kathmandu Valley.



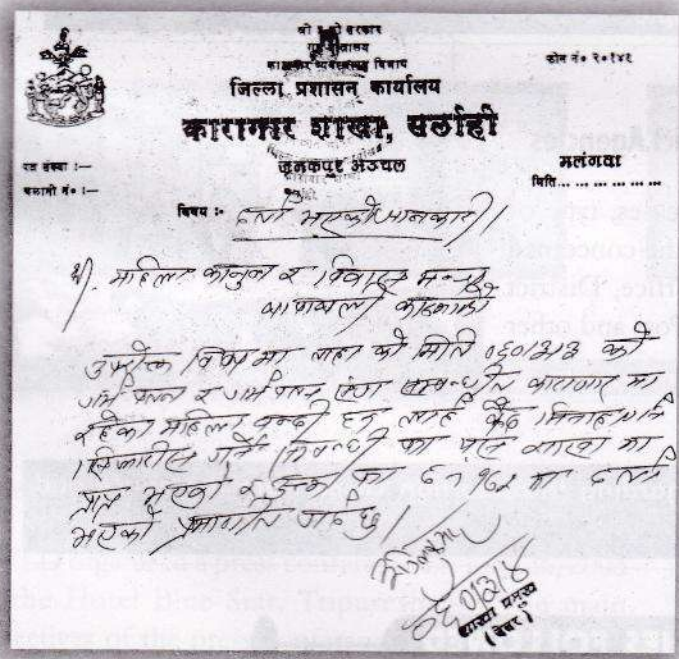
**Outcome:** It helped in representation of the case at the Courts.

## Collection of Case Files of Detainees/Prisoners

All the case files of women in prison were collected from the District Court, Appellate Court and from the Supreme Court for the analysis of the cases, which would be helpful while representing their case at the respective courts. The collected case files were analyzed by an expert to find out the general trend used by the courts while dealing cases of abortion or abortion related offences.

**Outcome:** Collection and analysis of case files of abortion and abortion related offences.

## Submission of Request Letter to Individual Jailor



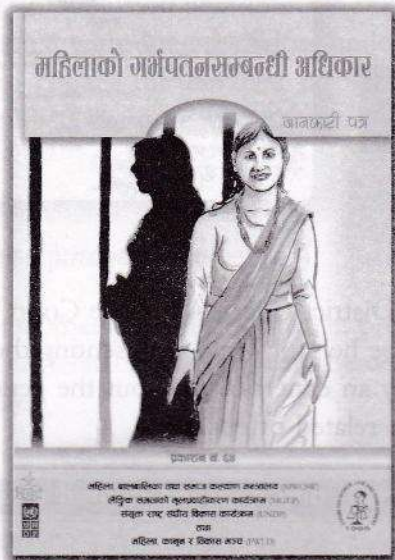
The request letter was submitted to the individual jailor of the district prison. The letter was submitted requesting them to give priority and recommend the name of women charged for abortion and abortion related offences, while recommending to the Department of Prison Management for the release of the prisoners according to Rule 29 of the Prison Regulation, 2020.

The jailors from the districts were very cooperative, they also gave personal commitments that they will recommend their name if found to be eligible for it. They also acknowledged the receipt of the letter.

**Outcome:** Individual jailor from districts prison committed to recommend the name for early release of women prisoners who have completed 50 percent of their punishment.

## Distribution of Materials Related to Amended Abortion Law

One of the major objectives of the field visit was the distribution of materials related to the amended abortion law. The demystified amended law on abortion, which includes the posters and leaflets, were widely distributed to the prison, police, Chief District Office (CDO), district health post, District Court/Appellate Court, Public Attorney's Office, district hospital and to organizations working at the grassroots level.



Outcome:

Wide dissemination of information on amended law on abortion from law enforcers to the grassroots people.

## Collection of Information from Relevant District Agencies

The information on the number of abortion cases, type of services provided, etc were also collected from the concerned agencies in districts like the District Police Office, District Court, Public Attorney Office, District Health Post and other NGO's at the district level.



Outcome:

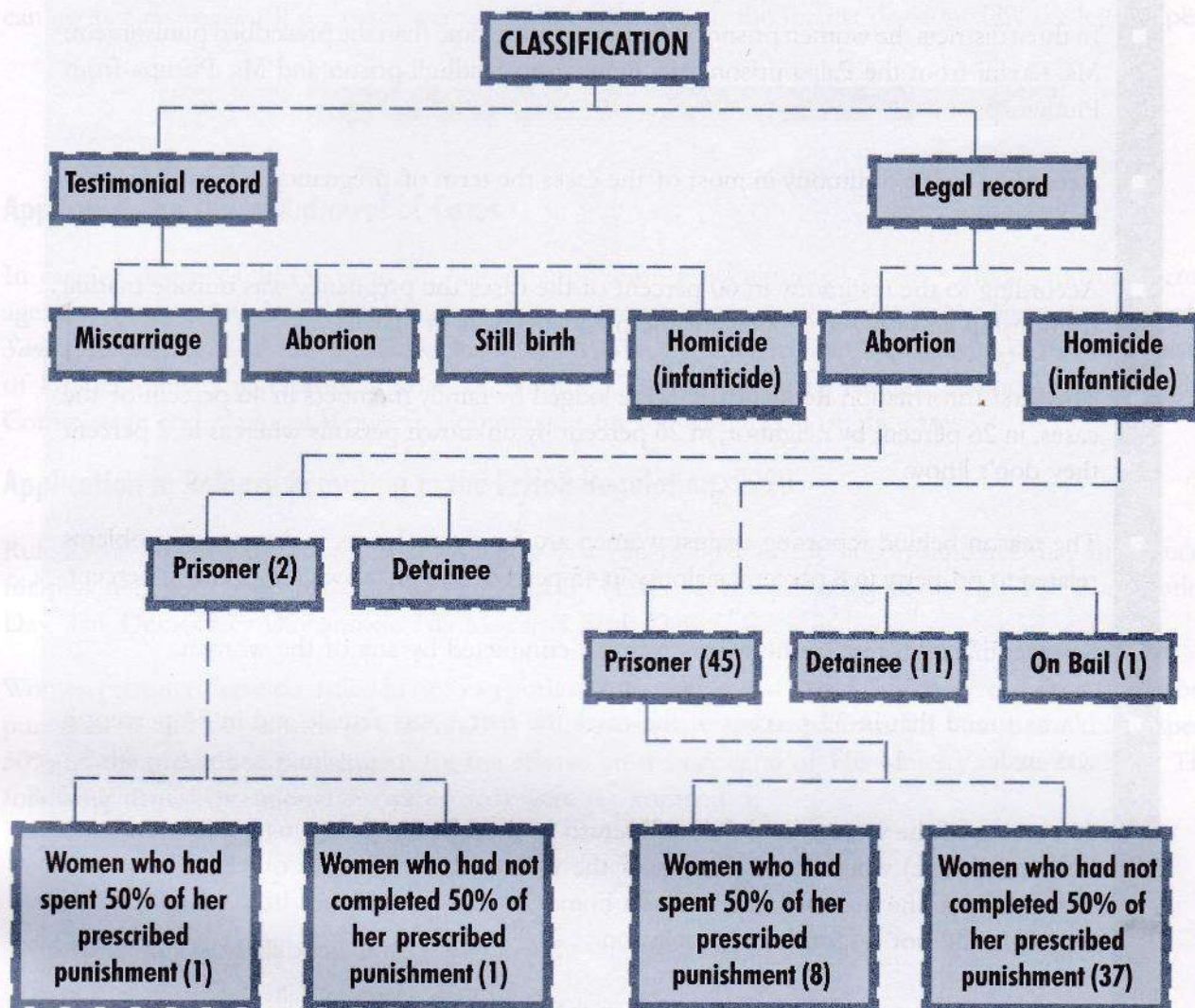
Collection of information regarding the abortion cases from the concerned agencies at the district level.

## STRATEGIES FOLLOWED

After the completion of the district field visit following strategies were taken to release women imprisoned on charges of abortion and abortion related offences.

## Classification of the Cases

On the basis of the scheduled interview and collected case files their status and nature of the cases were identified.



Outcome: Classification of status of women in prison and nature of their cases.

## Press Conference

FWLD organized a press conference on June 26, 2003 at the Hotel Blue Star, Tripureshwar. The main objectives of the press conference were to share the findings of the district field visit, which was conducted in June 2003. The attendees are from electronic media and the print media.

The major findings of the district field visit were:



- Total 59 women had been identified who were prosecuted on charges of abortion or abortion related offences. Among them 58 were in prison and one woman on bail.
- Only two cases were registered on charges of abortion and remaining cases are registered on charges of Homicide (infanticide).
- In three districts the women prisoners had spent more time than the prescribed punishment; Ms. Laxmi from the Palpa prison, Ms. Renu from Sindhuli prison and Ms. Pushpa from Piuthan prison.
- According to the testimony in most of the cases the term of pregnancy is from 4 months to 8 months.
- According to the testimony in 60 percent of the cases the pregnancy was outside marital relationship and only in 38 percent the pregnancy was in marriage.
- The First Information Report (FIR) were lodged by family members in 46 percent of the cases, in 26 percent by neighbor, in 26 percent by unknown persons whereas in 2 percent they don't know.
- The reason behind reporting against women are family problems in 4 percent, problems related to property in 8 percent, jealousy in 45 percent and unknown reason in 43 percent.
- Sex identification test of the foetus was not conducted by any of the women.
- It was found that in 39 percent of the cases the foetus was female and in 34 percent it was male.
- 50 percent of the women said they will return to their family (either maternal home or to husbands home) where as 15 percent of the women said they have other options apart from going to the maternal or husband's home. 26 percent said they have no option and 9 percent did not respond to the question.
- Only 34 percent of the women said that they are in need of the shelter, where as 32 percent said they would not need a shelter and 34 percent said they may need a shelter in future.
- Among the women, 79 percent were prisoners, 19 percent were detainees and 2 percent on bail.
- In 46 percent of the cases the punishment was 5 years, in 23 percent life imprisonment and only in 2 percent of the cases (one case) the punishment was of 1 year. Remaining ranges from 2 years to 10 years imprisonment.

**Outcome:**

Dissemination of field visit findings to media (electronic and print media) for the wide dissemination of the findings.

## File Study for the Identification of Test Case

The case files collected during the field visit was thoroughly studied by legal expert for the identification of the case as test case, for the conceptual clarity between abortion and infanticide. Unfortunately after the thorough study of each individual case expert gave an opinion that there is no suitable case, which can go as a test case. All the cases were analyzed according to the format developed by the legal expert.

**Outcome:** Analysis of individual case, gave detailed information on it.

## Application for the Withdrawal of Cases

In case of detainees and woman on bail an application was submitted to the Cabinet and concerned agencies for the withdrawal of the cases. The concerned agencies includes *Subha Janmoustab Samarhob Samati*; Department of Prison Management; Ministry of Law, Justice and Parliamentary Affairs; Ministry of Home; Ministry of Health; Ministry of Women, Children and Social Welfare; National Human Rights Commission and National Women's Commission for the withdrawal of the cases.

## Application to Release According to the Prison Regulation, 2020

Rule 29 of Prison Regulations, 2020 provides that “up to 50% of the prison sentence may be reduced for prisoners with good behavior and conduct by HMG on the following occasions: The Constitution Day, The Democracy Day and on His Majesty's Birth Day.

Women prisoners were classified in two categories: women who had already spent 50% of their prescribed punishment and those with less then 50%. Those names were recommended who had already spent 50% of the prescribed punishment for the release on the occasion of His Majesty's King Birthday. The following names (pseudonyms were used) were recommended;

- i. Asha, Khotang prison
- ii. Deema, Khotang prison
- iii. Charu, Dillibazar Khor, Kathmandu
- iv. Anshu, Kailali prison
- v. Kabita, Central Jial, Kathmandu
- vi. Pabitra, Palpa prison
- vii. Neeru, Dilli Bazarkhor, Kathmandu
- viii. Shashi, Piuthan prison
- ix. Beena, Kaski prison

## Initiatives Carried Out at Different Level

**An application to the district jailor:** An application to the districts jailors were sent along with the final court decisions to take the necessary steps for the release of the women and recommend their name.

**An application to the Department of the Prison Management:** Separate letter was sent to the Department also along with the copy of the final decision.

**An application to the Cabinet:** An application was also sent to the Cabinet along with the copy of the final court decision of the women. The letter was also sent to Ministry of Law, Justice and Parliamentary Affairs, Ministry of Health, Ministry of Women, Children and Social Welfare, Ministry of Home, Supreme Court, Law Reform Commission, National Human Rights Commission and National Women's Commission.

**Outcome:** On the occasion of His Majesty King's birthday on July 7, 2003 four women prisoner were released identified by FWLD.

#### **Asha , Khotang**

Asha, illiterate widow woman, is a resident of Khotang district. She was convicted of infanticide and sentenced for life imprisonment i.e. 20 years and was in prison since October 28, 1999 (2057/7/11). The Court invoked its discretionary power<sup>1</sup> and reduced her punishment to 4 years.

#### **Deema, Khotang**

Deema, married but living separately from her husband. She has three children two daughters and a son. She was convicted for infanticide and sentenced for life imprisonment i.e 20 years and the opinion of 5 years was given.

#### **Charu from Dilli Bazar Khor, Kathmandu**

Charu married with one son was convicted for infanticide and imprisoned for 20 years, which was reduced to 5 years by invoking discretionary power. She was in prison since May 30, 2000 (2057/2/17).

#### **Anshu from Dhangadi Jail Section, Kailali**

Anshu illiterate married woman having three children, two sons and daughter was a resident of Kailali. She was convicted for abortion and was imprisoned for a year. She was in prison since September 25, 2002 (2059/6/9).

## **Acknowledgement to the Government**

FWLD published a press release on July 8, 2003 to acknowledge the government for releasing four women prisoners imprisoned on charges of abortion and abortion related offences on July 7, 2003 on the occasion of His Majesty's Birthday.

1 No. 188 of Chapter on Court Procedure of the Country Code states that even if one is convicted of the offences in which the capital punishment, life imprisonment with confiscation of entire property or life imprisonment is prescribed in accordance with this Act, if the judge delivering the judgment is under suspicion on his own conscience that the case may be a mere accident or while considering the circumstances of the offence committed, he deems that it would be excessive to award the punishment as prescribed in the Act and deems on his conscience that the convict be punished leniently, he shall forward his opinion in writing with reasons therefore having fixed the punishment in accordance with the Act in his reference judgment. The final Court may, if it deems appropriate, award lesser prescribed in the Act.

## Separate Memorandum on Behalf of Women Prisoners/Detainees and FWLD were Prepared and Submitted

**Under Article 122 of the Constitution of the Kingdom of Nepal 1990, His Majesty has power to grant pardons and to suspend, commute or remit any sentences passed by any court, special courts, military court, or by other judicial, quasi-judicial, or administrative authority or institution.**

### Memorandum from FWLD to His Majesty the King for Comprehensive Pardon

A Memorandum was submitted to His Majesty the King on June 23, 2003. The memorandum demanded for the withdrawal of all the cases related to abortion and abortion related offences in different part of nation. The memorandum was also sent to other concerned agencies. The Secretariat of His Majesty the King had also acknowledged the receipt of the memorandum.

**Outcome:**

It highlighted the issue of women prosecuted on the charges of abortion and abortion related offences and also gave the detailed information to His Majesty the King and the concerned agencies.

### Memorandum to His Majesty with Signatures of Prisoners/Detainees

Memorandum with the signatures of women (52) prisoners/detainees on charges of abortion and abortion related offences were submitted to His Majesty the King on their behalf. Women prisoners/detainees were facilitated to present their case directly before His Majesty.

**Outcome:**

It helped in relaying the voices of women prisoners directly to His Majesty the King.



### Submission of Legal Arguments

Legal arguments was developed by the legal experts analyzing the legal grounds on which women prosecuted on charges of abortion and abortion related offences should be released. The argument is submitted to the Cabinet, Supreme Court, Law Reform Commission, National Human Right's Commission, National Women's Commission, Ministry of Law, Justice and Parliamentary Affairs, Ministry of Health, Ministry of Women, Children and Social Welfare and Law Reform Commission.

**Outcome:**

Legal arguments had all the legal grounds why women should be released who were imprisoned on charges of abortion and abortion related offences.

## Legal Representation

Anyone arrested or charged with a crime, whether or not detained, must be informed of his or her right to counsel or to free legal assistance.<sup>2</sup> The right to counsel applies while in custody, both before and during the trial. On the other hand the law in Nepal recognizes the right of indigent defendants to free counsel.<sup>3</sup> It was found most of the women lack legal representation in their cases. Realizing the need of the legal representation, FWLD represented the cases at different courts. As a result we were success to release some women (pseudonames were used) imprisoned on the aforementioned charges.

**Outcome:** Release of seven women in which six were represented by FWLD.

### **Menuka, Palpa**

**Menuka**, unmarried woman from Palpa prison was convicted for infanticide. She was sentenced for life imprisonment i.e. 20 years and the opinion of 5 years was given after invoking the discretionary power and she was in prison since December 12, 1999 (2056/8/26). Her case was pleaded at the Supreme Court on July11, 2003 and she was released on July14, 2003.

### **Neeta, Gulmi**

**Neeta**, married woman who can read and write, from Gulmi prison was convicted for infanticide. She was sentenced for life imprisonment and the opinion of 7 years was given after invoking the discretionary power and was in prison since August 3, 1999 (2056/4/18). Her case was pleaded at the Supreme Court on June 27, 2003 and she was released on August 3, 2003.

### **Sarita, Jhapa**

**Sarita**, from Jhapa prison was convicted for abortion but sentenced for infanticide. She was sentenced for life imprisonment i.e 20 years with opinion of 6 years from District Court as well as from the Appellate Court and she was in prison since October 8, 1998 (2055/6/22). Her case was pleaded at the Supreme Court on August 15, 2003 and she was released on August 18, 2003.

### **Anju, Palpa**

**Anju**, married and illiterate woman from Palpa prison was convicted for infanticide. She was sentenced for life imprisonment i.e. 20 years and the opinion of 5 years was given and she was in prison since September 4, 1999 (2056/5/19). Her case was pleaded at the Supreme Court on October 17, 2003 and she was released on October 20, 2003.

- 2 Article 14 (5) of the Constitution states that no person who is arrested shall be denied in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.
- 3 Article 26 (14) of the Constitution states that the State shall, in order to secure justice to all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of Rule of Law.



### **Rosi, Dillibazar Khor**

**Rosi**, unmarried, who can read and write from the Dillibazar Khor Prison Section, was convicted for infanticide. She was sentenced for life imprisonment i.e. 20 years with opinion of 5 years and she was in prison since August 21, 2000 (2057/5/5). She was released on November 6, 2003.

### **Shristi, Central Jail Section**

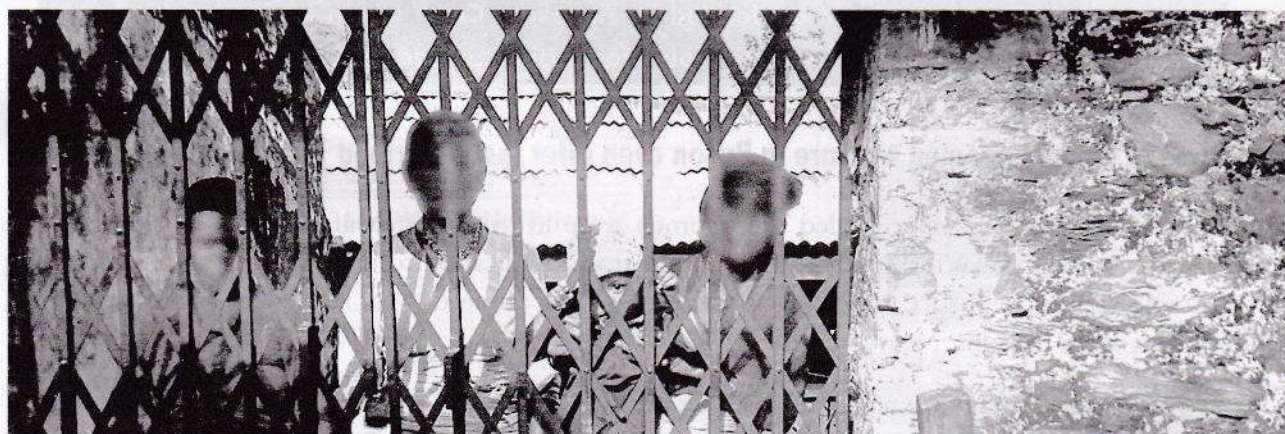
**Shristi**, divorcee woman who can read and write from the Central Jail Section was convicted for infanticide. She was sentenced for life imprisonment i.e. 20 years and the District Court as well as the Appellate Court gave the opinion of 5 years. She was in prison since March 24, 2000 (2056/12/11). The Supreme Court decided her case on April 23, 2004 and she was released on the same day.

### **Sunila, Central Jail Section**

**Sunila**, married and educated up to primary level from the Central Jail Section was prosecuted for infanticide. Her case was decided by the Kathmandu District Court and she was released on February 7, 2003 (2059/10/24).

## **Inclusion of Voices of Women while Representing the Case**

While representing the case the arguments highlighted the voices of women. The issues of class, gender, educational background and economic background of women in prison were shared. Also the issue of the women with their children was raised more seriously.



## **Follow-up of the Cases**

### **Cases pending due to the negligence of court administration**

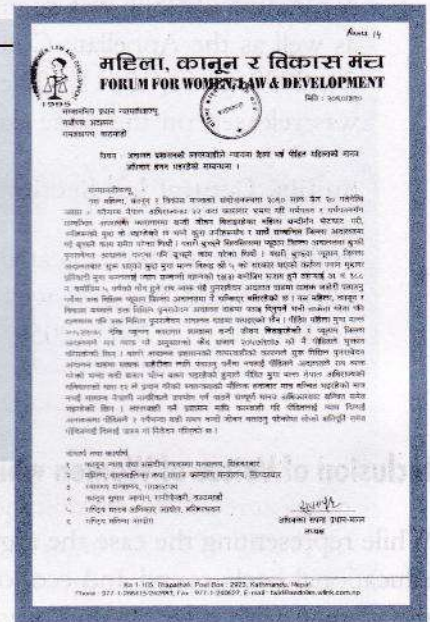
During the field visit some cases were identified, which were pending due to the negligence of court administration. In this regard FWLD requested the Supreme Court of Nepal for the immediate action for the further proceedings of the cases. The cases were forwarded immediately after the intervention of FWLD for further proceedings without delay.

**Case of Soni from Morang:** Morang District Court decided case of Soni who was convicted for infanticide. She was in prison since June 3, 2000 (2057/2/21). The Court sentenced her for life imprisonment i.e. 20 years and gave the opinion of 5 years. The case was supposed to be sent at the Appellate Court for the referral (*Sadbak Jaber*) but FWLD during the field visit found pending at the District Court due to the negligence of court administration. After the intervention by FWLD the case was immediately forwarded at the Appellate Court and now the case is at the Appellate Court for the further proceeding.

**Outcome:** Soni's case was forwarded for further proceeding.

**Pushpa, Pyuthan**

**Pushpa**, illiterate woman, living separately from her husband from Pyuthan prison was convicted for infanticide. She was sentenced for life imprisonment, 20 years with opinion of 5 years from the lower court. She was in prison since January 24, 1996 (2052/10/10). Her case was also to be sent at the Appellate Court for the referral but was pending at the District Court due to the negligence of court administration. In this regard FWLD submitted application to the Rt. Hon'ble Chief Justice to address the issue. The Chief Justice ordered the registrar to immediately bring the case into consideration with most priority within seven days. The case was immediately forwarded to the Appellate Court and was decided within seven days and forwarded to the Supreme Court.



**Outcome:** Ms. Pushpa's case was decided by Appellate Court within seven days and was forwarded to the Supreme Court for further proceedings.

**Initiatives to Release Women who are in Prison even after the Prescribed Term**

During the field visit, it was revealed that women were in prison even after the completion of the prescribed punishment. FWLD immediately submitted the application to the Supreme Court addressing to the Rt. Hon'ble Chief Justice informing about the issue and requesting for immediate action in Piuthan, Sindhuli and Palpa prison.

**Laxmi, Palpa**

**Laxmi** from the Palpa prison was convicted for infanticide. She was sentenced for life imprisonment i.e. 20 years and the opinion of 3 years. Unfortunately she was in prison for more than three years. An application addressing Rt. Hon'ble of Supreme Court was submitted on June 24, 2003 informing about the delay in the proceeding of her case and she being in prison for more than the prescribed punishment. As a result of this initiative, Supreme Court on July 1, 2003 gave the order for her immediate release and she was released on July 2, 2003.

## Renu, Sindhuli

Renu from the Sindhuli prison was convicted for infanticide and sentenced for life imprisonment and the opinion of 2 years was given. She was in prison since November 23, 2000 (2057/8/8). She had spent more time in prison than the prescribed sentence. An application addressing Rt. Hon'ble Chief Justice of Supreme Court was submitted on July 22, 2003 informing about the issue. At that time her case was at the Supreme Court, Rt. Hon'ble Chief Justice ordered the registrar to forward her case for hearing immediately. As a result, her case was forwarded for hearing immediately on July 23, 2003 and decided on the same day. Due to the immediate intervention by FWLD, she was released on July 24, 2003.

### Outcome:

Laxmi was released on 2 July 2003 and Renu from Sindhuli released on 24 July 2003.

## Media campaign

Media campaign is one of the part of the activities and the strategy used for release of women who are prosecuted and imprisoned on charges of abortion and abortion related offences. The articles were on the amended abortion laws, its positive impact, the situation of women in prison, the availability of the services after the amendment to the abortion laws etc.

2057/8/8  
Monday, December 8, 2003

### स्पेसटाइम

## गर्भपतनको अधिकार ऐनमा, महिलाहरू जेलमा

काठमाडौं, ७ डिसेंबर २००३

राष्ट्रिय महिला आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ।

RAJDHANI  
Sunday, 16 February, 2003

## गर्भपतनसम्बन्धी ऐन लागू भएपनि परिबन्धमा परेकाहरू जेलमै

काठमाडौं, १६ फेब्रुअरी २००३

गर्भपतनको अधिकार ऐन लागू भएपनि पनि परिबन्धमा परेकाहरू जेलमै रहेका छन्। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ।

THE STRAIGHT NEWS  
Kathmandu - Wednesday, July 16, 2003

## Abortion And Women In Prison

By Sushila Shrestha

It had a double purpose to 3 brought medicine and drugs. 1. Much because of the law. The law was made when the abortion was not a crime. The law was made when the abortion was not a crime. The law was made when the abortion was not a crime.

जन्मदातालाई मान्यता दिनु अघि गर्भपतनको अधिकार ऐन लागू भएपनि पनि परिबन्धमा परेकाहरू जेलमै रहेका छन्। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ।

2003/7/16  
Thursday, July 16, 2003

## if abortion is legal, why are these women in prison

Sushila Shrestha

Last year, Mulla Tamang (her real name) of Deopatan VDC Laligurha, became pregnant for her father-in-law. She was arrested and sentenced to 10 years in prison. She was arrested and sentenced to 10 years in prison. She was arrested and sentenced to 10 years in prison.

गर्भपतनमा महिलाबन्दी विरालो र मुसाको कानून

गर्भपतनको अधिकार ऐन लागू भएपनि पनि परिबन्धमा परेकाहरू जेलमै रहेका छन्। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ। यो आन्दोलनले गर्भपतनको अधिकार ऐनमा परिवर्तनको माग गर्दै आन्दोलन गरिरहेको छ।

### Outcome:

Mass awareness on the issue of women in prison on charges of abortion and abortion related offences, amended abortion laws and its impact on women.

## Publication of Appeal for Issuing Procedural Order

Since the procedural order on safe and accessible abortion services was not adopted by the government after a year of legalization of abortion in Nepal, FWLD published an appeal addressing to His Majesty's Government for issuing the procedural order to ensure the reproductive health rights of women.

## Identification of Women Prisoners Targeting The Constitution Day (November 9, 2003)

On the occasion of The Constitution Day, FWLD again identified women prisoners who had spent 50 percent of their prescribed punishment. After identifying the women prisoners, the jailors in districts were requested to recommend the name of these women for their release on The Constitution Day. Letters were also sent to the Department of Prison Management, Cabinet, Office of the Prime Minister, Ministry of Home, Ministry of Law Justice and Parliamentary Affairs, Ministry of Women Children and Social Welfare, Ministry of Health, National Human Rights Commission and National Women Commission.

Nine women prisoners (pseudonyms were used) were identified and their names were forwarded for release on the Constitution Day they were;

- Beena, Kaski prison
- Sita, Parsa prison
- Aarti, Okhaldhunga prison
- Harsha, Morang prison
- Reena, Sarlahi prison
- Neeru, Sadar Khor Dillibazar prison
- Shashi, Piuthan prison
- Kabita, Central Jail Section
- Januka, Palpa prison

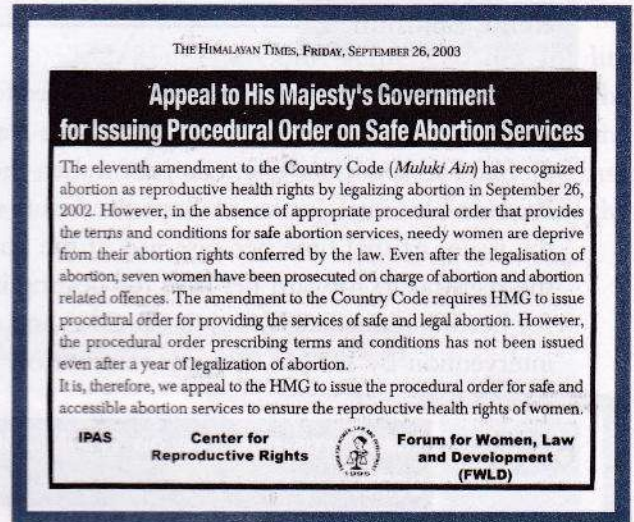
**Outcome:** Among the identified, three women prisoners were released on the occasion of the Constitution Day (November 9, 2003).

### Kabita, Central Jail Section

**Kabita** from Central Jail Section was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 5 years. She was in prison since November 13, 2000 (2057/7/28). Her case was decided on April 2, 2003 (2060/1/19) by the Supreme Court and she was released on November 9, 2003.

### Shashi, Pyuthan

**Shashi** from Pyuthan prison was convicted for infanticide and was sentenced for life imprisonment and the opinion of 5 years was given. Ms. Shashi was in prison since September 30, 1999 (2056/6/13). Her case was decided on May 5, 2003 (2060/2/22).



## Sita, Parsa

Sita from Parsa prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 10 years. Ms. Sita was in prison since October 30, 1998 (2055/7/13). Her case was decided on September 6, 2001 (2058/5/21) by the Supreme Court and confirmed the same punishment i.e. 10 years imprisonment.

## Release on October 21, 2003

On the 6<sup>th</sup> day of the birth of the daughter of the Crown Prince and Princess three women (pseudonyms were used) were released. Those released were among the ones identified by FWLD for their release on the occasion of the Constitution Day.

### Outcome:

Three women were released among them two were identified by FWLD, Januka from Palpa prison and Reena from Sarlahi prison got released on October 21, 2003.

## Januka, Palpa

Januka from Palpa prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 5 years. She was in prison since October 30, 1999 (2056/7/13). Her case was decided on February 6, 2003 (2059/10/23) by the Supreme Court.

## Reena, Sarlahi


Reena from Sarlahi prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 7 years. She was in prison since January 15, 1998 (2054/10/2). Her case was decided on October 3, 2002 (2059/6/17) by the Supreme Court.

## Pooja, Gulmi

Pooja from Gulmi prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 5 years. She was in prison since November 26, 1998 (2055/8/10).

## Networking and Coordination with Nepal Bar Association (NBA)

FWLD had been providing legal aid to women convicted on charges of abortion and abortion related offences. However, due to resource constraints as well as the difficulty to reach the district it is not possible to provide legal aid to women whose cases are either running at District Court or at Appellate Court. In order to overcome this situation FWLD requested NBA to work in collaboration and coordination with in different parts of country to provide legal aid to the needy women. NBA principally agreed on the issue and provided legal aid to the women from districts. For the

Nepal Bar Association	
Ramshah Path, Kathmandu, Nepal P. O. Box No : 5502	
Tel : 4254647 Fax : 97711262752 e-mail : nba@netlink.com.np Website : www.nba.org.np	
Date: 21 January, 2004	
No:	
Legal Executive Committee (2001-2004)	
President Sh. Nath Pyakurel	
Vice President 1. Prasad Ghimire 2. Bhumi Kharel 3. Madan Achary 4. Jada Prasad Sharma 5. Ramesh Datta Bhatta	
Secretary Sh. Krishna Kharel	
Treasurer Sh. Raja Joshi	
	Ms. Bindu Magar Research Officer Forum for Women, Law and Development
	Re: List of detained women requiring legal aid.
	Dear Ms. Magar,
	I would like to thank you for your letter dated 19th November, 2003, regarding list of detained women in various prisons of the Kingdom. The names of the detainees was immediately sent to concerned district bar units with an instruction to provide appropriate legal aid to them. From Court of Appeal Unit Biratnagar and District Court Unit Gulmi, we have received some response. The copies of the received letter is enclosed herewith for your kind information. Any further response and development in any referred case would be conveyed to you duly.
	With sincere thanks,
	 (Satish K. Kharel) Secretary

purpose, FWLD provided the updated list of women to the NBA requiring legal aid and helped to reach the needy women.

**Outcome:** Nepal Bar Association agreed to provide legal aid to women identified by FWLD requiring legal aid.

### Writ Filed for Being Delayed for the Adoption of Procedural Order

It has been more than a year since abortion was legalized but unfortunately the Procedural Order for the safe and accessible abortion services had not yet been adopted. Changes in law do not automatically grant the right to women until and unless they are able to exercise safe abortion services.

Advocate Sapana Pradhan Malla filed a writ petition for FWLD on October 31, 2003 at the Supreme Court for issuing an order to the government to formulate procedures needed to ensure safe abortion services. The Government, the Prime Minister, the Health Ministry and its Department of Health and Family Health Division have been made defendants in the case.

The Supreme Court issued a show cause notice to government authorities. A petition was the first of its kind in the country's judicial history filed for issuing an order on the issue to the government to immediately formulate policies, rules and directives to implement and regulate constitutional and legal rights guaranteed by the law. A single Bench of Hon'ble Justice Min Bahadur Rayamajhi of the Supreme Court has issued the show cause notice to the government bodies on November 3, 2003.



**Outcome:** Procedural Order for the safe and accessible abortion services had been adopted on December 25, 2003.

### Mass Population Made Aware of Supreme Court Order

Press release was published on the same day (November 3, 2003) where the Supreme Court order show cause notice to HMG, Health Ministry, Department of Health and Division of Family Health, government organs responsible for formulating and issuing policy, rule and regulation needed to ensure women's right to safe abortion.

### Publication and Distribution of Fliers

A flier addressing the issue of women in prison highlighting their conditions including economic background, educational background, and age of the women, class issue, caste issue and need of their release was published and distributed widely.

One of the main reasons for the publication and distribution of the flier is to make general mass aware about the issue and conditions of women in prison. The published flier is widely disseminated in Kaski district, Morang and in the Kathmandu Valley.

**Outcome:** Sensitization on the importance of release of women imprisoned on charges of abortion and abortion related offences.

### Identification of Women's Name for Release on the Democracy Day

On the occasion of the Democracy Day (February 18,2004) five women prisoners were identified who had spent more than 50% of their prescribed punishment. Their names (pseudonyms were used) were sent for the recommendation along with their final decisions. They were;

- Champa, Terhathum prison
- Aarti, Okhaldhunga prison
- Beena, Kaski prison
- Neeru, Dillibazar Khor prison section
- Priya, Morang prison.

**Outcome:** Two women's prisoners were released on the occasion of the Democracy Day among the ones identified by FWLD.

#### Neeru, Dillibazar Sadar Khor

**Neeru** from Dillibazar Khor prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 5 years. She was in prison since July 2, 2000 (2057/3/18).

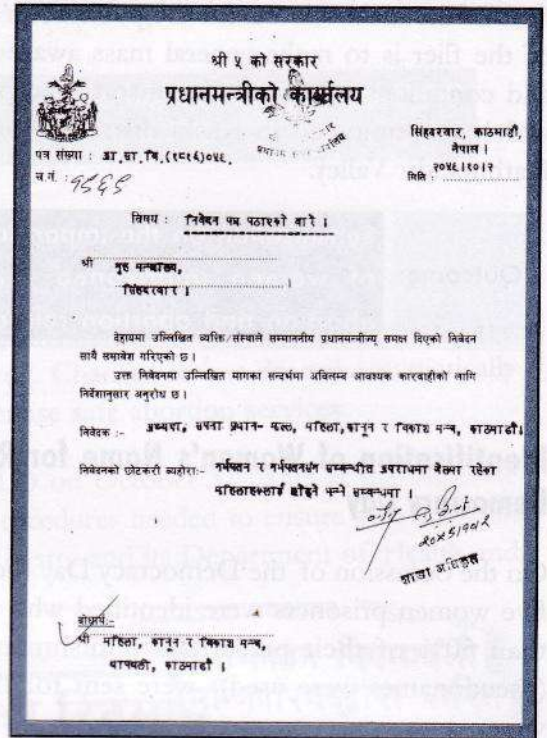
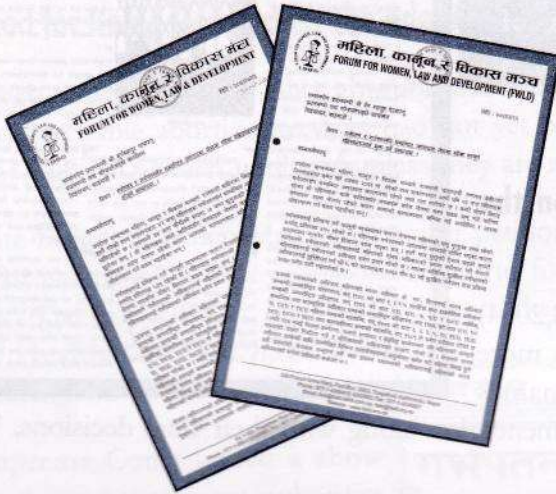
#### Beena, Kaski

**Beena** from Kaski prison was convicted for infanticide and was sentenced for life imprisonment (20 years) and opinion of 5 years. She was in prison since August 21, 1998 (2055/5/5).



## Follow-up Letter to the Prime Minister

FWLD had been continuously submitting the advocacy and lobbying letters since 2001 for the release of women imprisoned on the charges of abortion and abortion related offences, with their detailed information.

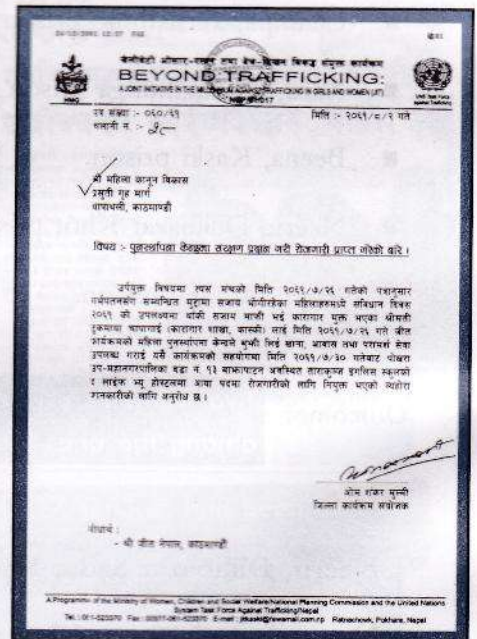


**Outcome:** Office of Prime Minister gave the directive order to initiate the appropriate steps to release women as demanded by FWLD.

## Facilitate Women for the Rehabilitation

FWLD also facilitated the released one to find the rehabilitation shelter. FWLD had helped four women for their rehabilitation, Reenu and Shristi who was released from Sindhuli prison and Central Jail respectively got shelter at ABC/Nepal and Lila from Gulmi and Pooja from Kaski both of them got shelter at JIT based at Kaski district. Some of them also receive training and also employment making them self sufficient.

**Outcome:** Four women were able to get the shelter.



## Providing Scholarship for Further Study

Forum for Women, Law and Development (FWLD) is also successful in providing scholarship to the interested women wanting to continue their study apart from facilitating them to find shelter after their release. Ms. Renu (pseudonym) is receiving scholarship for her further study for two years. The Forum supported her, as she was very interested to pursue her further study. Ms. Renu is presently studying in grade nine (2005 batch) from the "Prerana Mahila Madhyamic Vidhalaya".

**Outcome:** Ms. Renu is getting scholarship for 2 years for her further study.



## Residential Training to the Lawyers

Three day residential training was conducted at Godwari Village Resort from Nov.1-3, 2004 for the lawyers from different districts including Kathmandu.<sup>4</sup> The training was conducted with an objective to learn how we can use international human rights framework at the domestic level for effective implementation and for releasing women who are in prison for abortion and abortion related offences. In-depth discussion on the provisions related to abortion, procedure, role of civil society, lawyers, judges and future strategies were discussed in the meeting. The main sessions of the training are:



- Conceptual understanding of abortion and related terminologies in medical and legal aspects
- Abortion: women's human right, abortion law in Nepal and its impact on women
- Critical analysis of new law on abortion, judicial trend and its implication (national and international)
- Safe abortion service procedure, arguments and strategies that can be useful in advocacy for the release of women imprisoned on charges of abortion/infanticide
- Identification of core issues and how to prepare effective arguments using human rights framework and
- Future strategy and role of Nepal Bar Association, Legal Aid Project and other NGO's for releasing imprisoned women.



4. Resource Persons for the training were; Hon'ble Kalyan Shrestha, Adv. Agni Kharel, Sapana Pradhan-Malla, Dr. Swaraj Rajbhandari, Madhab Baskota and Sabin Shrestha. Participants were Shova Shakya, Bhumishwor Gautam, Rohani Raj Joshi, Khaga Raj Kattel, Keshav Raj Pokhrel, Krishna Basnet, Samjhana Pokharel, Lalita Shrestha, Raju Dhakal, Bishnu Pokhrel, Pyaru Hamal, Srijana Mali, Basanti Shrestha, Chet Raj Bhatta, Sundar Khanal, Jaya P. Poudel, Saraswati Shrestha, Meera Dhungana, Bishnu Gurung and Shima Dhimi. The programme was coordinated by Binda K. Magar.

## Following activities were conducted by the end of the training:

### ◆ Submission of Appeal

An appeal was submitted to the Ministry of Law, Justice and Parliamentary Affairs, Ministry of Women, Children and Social Welfare (MWCSW) from the lawyers who participated at residential lawyers training at Godwari. An appeal was signed by all the lawyers demanding the need to release women who are in prison for abortion or abortion related offences.

भारतीय नैक बहादुर पोखान न्जु  
मन्त्री  
कानून न्याय तथा संसदीय व्यवस्था मन्त्रालय  
सिंहदरवार, काठमाडौं

मिति २०७१/७/१८

**विषय: गर्भपान तथा जलाक मारेको अभियोगमा नेम्सा  
रेडका मितिवाटलाई नैसर्गक गर्ने सम्बन्धमा।**

महोदय,

पुरोक्त सम्बन्धमा मुझकी पुत्र एखारी संशोधन भई गर्भपानलाई सार्थक कानुनी मान्यता प्रदान गर्नु पूर्व गर्भपानको अपराधमा तथा गर्भपानको कानुनी मान्यता नभएको परिणामबाट जनाके बारेको (जना सम्बन्धी ब्राह्म अन्वय) भने अभियोगमा बन्दी जीवन बिताउन बाध्य हुनु परेको अवस्था भएको नाथीको मानव अधिकारको हानन भन्ना हो। इन्दीपुर्ण कानुनी व्यवस्थाको विकास भई बन्दी जीवन बिताउन बाध्य भइसकेको अवस्थालाई अन्त पारी महिलाको मानव अधिकारको सम्भारन, संरक्षण र परिपालन भई उक्त अभियोगमा बन्दी जीवनमा रहेका सम्पूर्ण महिलाहरूलाई आन्तरिक रचनायुक्त पुरा गरी मुक्त तथा जैव मुक्त गर्ने तयारीमा उल्लेखित हामी माननीय मन्त्री न्जु मातहत श्री २ को सरकारलाई हार्दिक अनुरोध गर्दछौं।

नाम	पेशा	इलाका
१. सारना मान झाडान	अभिवक्ता	महिला कानून र विकास मंच
२. सुन्दर बजाल	अभिवक्ता	केन्द्रिय महिला कानुनी सहायता समिति
३. सारवती श्रेष्ठ	अभिवक्ता	पुरानदेवन वार इकाई, पाटन
४. मिया बुझना	अभिवक्ता	महिला कानून र विकास मंच
५. प्यात इमान	अभिवक्ता	कानुनी सहायोग तथा वारमाई केन्द्र
६. बलानी श्रेष्ठ	अभिवक्ता	कानुनी सहायोग तथा वारमाई केन्द्र
७. बलीता श्रेष्ठ	अभिवक्ता	पुरानदेवन वार इकाई, मकवानपुर
८. किशोरा राज पोखरील	अभिवक्ता	पुरानदेवन वार इकाई, प्युठम

९. भूमिधर गौतम	अभिवक्ता	पुरानदेवन वार इकाई, पापुड
१०. राजु इवाल	अभिवक्ता	मुझरी जिल्ला वार इकाई
११. शोभा शायल	अभिवक्ता	पापुवा जिल्ला वार इकाई
१२. विष्णु पोखरेल	अभिवक्ता	बाके जिल्ला वार इकाई
१३. रोहिणी राज जोशी	अभिवक्ता	सिन्धुपाल्चोक जिल्ला वार इकाई
१४. सुष्मणा पोखरील	अभिवक्ता	काठमाडौं जिल्ला वार इकाई
१५. जय पसाह चौदेल	अभिवक्ता	पापुवा विहित सरोकार केन्द्र
१६. विष्णु मुखर्ज	अभिवक्ता	महिला कानुनी विकास मंच
१७. विद्या मगर	अनुसन्धान अधिकृत	महिला कानून र विकास मंच
१८. सविन श्रेष्ठ	अभिवक्ता	महिला कानून र विकास मंच
१९. सुनता मानी प्रधान	अभिवक्ता	रेडक नेपथ
२०. रेश राज मजु	अभिवक्ता	इन्द्रेष्पुरा, जिल्ला वार इकाई
२१. शिवा धामी	अभिवक्ता	कानुनी अनुसन्धान तथा शोध विकास केन्द्र
२२. सारवती श्रेष्ठ	अभिवक्ता	पुरानदेवन वार इकाई, इलाम
२३. कुमाल बस्नेत	अभिवक्ता	पोखरा जिल्ला वार इकाई

### ◆ Provided the Updated list to MWCSW with the Legal Status of each Case

FWLD was asked by the MWCSW to provide the updated list of women in prison for abortion or abortion related offences. Total of 28 names of women from 15 districts were provided to the Ministry for the reference.

#### Outcome:

Sharing of experiences, brief understanding of the different human rights framework, identification of the challenges and development of future strategy, submission of appeal to the Ministry of Law Justice and Parliamentary Affairs, coordination and finally networking with the district lawyers.

## Activities by the Lawyers at the District Level

The district lawyers who participated at the residential training are providing counseling and legal services to the needy women after they returned to their respective districts. For eg: Advocate Krishna Basnet provided legal service to one of the woman and released her from prison. Also Advocate Rohani Raj

Joshi is providing the legal service at the district level and continuously following up the case. On the other hand they also inform FWLD if any new cases are registered at the district level.

**Outcome:** Release of one woman and provide legal services/counseling to the needy women.

### Release of Women on the Constitution Day

Nov 8, 2004 on the occasion of the 15th Constitution day 14 women prisoners had been released who were imprisoned on the charges of abortion and abortion related offences. All the released women were imprisoned prior to the 11th Amendment to the Country Code. Among those 14 released, 2 are released according to Rule 29 of the Prison Regulation, 2020 and 12 women were released on pardon.

**Outcome:** Total of 14 women were released on the Constitution Day.

### Achievements due to the Inputs and Initiatives carried out by NGO's

The activities carried out by FWLD and other organizations and institutions (LACC, CeLRRd, Nepal Bar Association, RUWDUC, Pro-Public etc.) were strategic and very effective in its own term which results to the release of many women from the prison.

#### A Release of women from the prison through different strategies.

1. Legal Representation	: 12 women were released.
2. On His Majesty's Kings Birthday	: 4 women were released on July 7,2003 and 2 women on July7, 2004.
3. Follow-up process	: 2 women were released through follow-up intervention.
4. On October 21,2003	: 3 women were released on the occasion of the sixth day of the birth of daughter of the crown prince and princess.
5. On Constitution Day	: 3 women were released on Nov.9,2003 and 14 women on Nov. 8,2004 (12 on pardon and 2 on the basis of Rule 29, of the Prison Regulation 2020).
6. On Democracy Day	: 2 on February 19,2004.
7. Other intervention	: 1 women was released.
8. Completion of the term	: 2 woman was released.
9. Sensitization	: 9 women were released.

**According to FWLD's record, total of 54 women had been released from the prison from July 2003 to January 2005.**

- B. Procedural Order was adopted on December 25, 2003 for the safe, legal and accessible abortion services by the government after writ filed by FWLD for being delayed for the adoption of Procedural Order against the government at Supreme Court on October 31, 2003.
- C. Nepal Bar Association committed to take over the cases running at the districts level.
- D. Media campaign helped for raising awareness and sensitization to the general mass.

### Challenges

- Late recommendations to release according to Rule 29 of Prison Regulation, 2020 in some cases due to unavailability of the final court decision.
- Lack of education among the women prisoners/detainees.
- Women constantly change their stories which made it difficult to establish the truth of a situation.
- Low status of women in society and family.
- Communication difficulties especially in rural areas.
- Lack of coordination between the organizations working on the same issue.
- Non-realization of their responsibility by the court administration.
- Lack of cooperation in some districts by the court administration and jail administrations.

### Lesson Learned

- Involvement of media persons and advocates in the research helps to bring the issue forward effectively.
- The continuous follow-up of the cases helps to get in touch with the women easily.
- Collaborative work with the Bar helps to provide legal services to large women at a time.
- Distribution of materials during the field visit helps to disseminate the information about the amended abortion law widely.

## Lesson Learned

- Preparation of legal arguments was very effective for the pleading of the cases.
- Collection of signatures of women prisoners and detainees helped to collect the women's voices together to create pressure for their release.
- Collection of case files is helpful while representing their case at the court.

## Challenges Ahead

- Women on charges of abortion and abortion related offences are still in prison.
- Lack of definition and conceptual clarity between abortion, infanticide, miscarriage and stillbirth may results women being prosecuted on charge of infanticide.
- Services are not available to the women living at rural areas.
- Abortion still dealt under the chapter of homicide.
- Lack of scientific investigation system results to the criminalization of women even after legalization of abortion.
- Case had been filed at Supreme Court claiming the present law is discriminatory towards men which provides sole right to women only for legal abortion upto 12 weeks of pregnancy.
- Lack of conceptual clarity on the issue of reproductive health right of women.
- Law relating to abortion is still discriminatory where the punishment is more for woman then for any other who causes abortion.
- Extent of disability and period of gestation is not defined in the procedure.
- Lack of awareness on law.
- Resistency among the law enforcement agencies.

## Recommendations

- Priority should be given to the women imprisoned on charges of abortion and abortion related offences while recommending the names for the release on certain occasions.
- Punishment should be reduced using the discretionary power.
- There should be wide dissemination of information regarding the amended abortion laws.
- The term, abortion, infanticide, stillbirth and miscarriage should be defined clearly.
- Abortion should be separated from the chapter on Homicide.
- Training should be given to the police, so that they can proceed the investigation of the case properly.
- More training were should be provided to the advocates, public attorneys to use the international instruments in their arguments while pleading the cases.
- The judiciary should be flexible while dealing the cases of women who were imprisoned on the aforesaid charges specially need to recognize it as a right to self determination, right to choose, right to equality, right against torture and exploitation and right to health.

## Future Activities

- Update record of women imprisoned for undertaking abortion or abortion related offences.
- Continue to facilitate the women for finding shelter.
- Coordination between civil society & government agencies.
- Follow up for releasing women who are still coming within the pervuew of law.
- Also need to create legal service for realizing the right and ensuring safety to the service providers.

## LEGAL ARGUMENTS FOR THE RELEASE OF WOMEN

*"Let's release women serving time for abortion and related charges created as a result of criminalizing abortion"*

The eleventh amendment of the Country Code 2020, which came into force on Ashoj 10, 2059, has accepted abortion and reproductive health as women's human rights, and has for the first time provided to a Nepali woman the right to abort. Because of the laws related to abortion, as they existed before the amendment, fundamental human rights of several women have been violated and abridged, directly or indirectly. A nationwide study and prison visits, conducted by *Forum for Women, Law and Development* and *Centre for Reproductive Rights* in Jestha 2060 found that 59 women are charged on abortion and abortion related crime.

Law should be for justice and justice should be perceivable. Law and justice should not be limited to papers but should be reflected in practice. Because abortion was a criminal offense and since there is a misleading belief that in criminal cases there can be no retrospective effect of a law, many women serving terms for the crime of abortion have not been able to earn freedom even after abortion has been legalized. In this context, an obligation has arisen on the state to protect and promote the right to abort, as provided for by the amended provisions of the Code, and to release the women serving terms on abortion charges. The state should release those women from prison for the following reasons.

1. First of all, the very act of criminalizing abortion is *prima facie* a violation of human rights. By forcing the woman to serve a term by criminalizing abortion, Nepal has not only failed to fulfill its obligations under various international instruments on human rights—like the Universal Declaration on Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966, Convention on the Elimination of All forms of Discriminations Against Women, 1979, Convention on the Rights of the Child, 1989—but has directly discriminated against women. It is the responsibility of the state to fulfill the obligations created by those instruments.
2. In the context of the amended law, there appears to be no legal complication that prevents freeing of women imprisoned for committing the crime of abortion or crimes created as a result of the banned state of abortion because the present law accepts abortion to be legal. While there is a general principle of criminal law that prevents retrospective effect of a criminal provision, there is also a principle under criminal law that an amendment or repeal of a certain law also ends the crime and punishment that the amended law created. It is also a generally accepted principle of law that in the event of an amendment of a law that created a certain crime, a judgment that bases a punishment on the now non-existent law too should be ineffective.

3. Of the women serving terms on charges of abortion and crimes created as a result of the criminalized state of abortion, it was found by a study conducted by *Forum for Women, Law and Development* and *Centre for Reproductive Law and Policy* in 2001/2002 that only about 10 or 15 percent of the women committed infanticide while the rest had undergone abortion. Because of a lack of clear distinction and definition of infanticide and abortion in the prevailing laws, Nepali women are condemned to punishment even in cases of abortion. There should not be a situation that an innocent citizen is forced to face the consequences of ignorance and lack of conceptual clarity in the law and the institutions responsible for enforcement of the laws, nor should they suffer the results of the biased mind-set that comes into play in the investigation and prosecution procedure. This is against the concept of rule of law. An act that can not be a crime should not be taken as a crime as a result of incompleteness and lack of clarity in the law.
4. It is a general principle of law that a person is presumed to be innocent unless his or her guilt is established. There is also a general principle that any legal action has to be independent and unbiased. However, the women charged under the law of abortion have not been able to exercise the rights which accrue to them as an outcome of the principle of presumption of innocence. They are stigmatized and discriminated against from the point of filing of the first information report to the final disposal. The situation requires the accused to prove her innocence, instead of the state taking the burden, while the entire force of the machinery of the state is used against her. The discriminatory characteristic of the then law has adversely affected only the poor, rural and uneducated women. Because of the legal provision directed against women, during the course of proceedings of a case many of the rights of the women including right to reproductive health, right to equality, right to remain silent, right to privacy and right to legal representation are violated. The outcome in many proceedings where the accused woman fails to have even a legal representation, but is forced to suffer the punishment pronounced to her as a result of the proceeding, is against the principle of natural justice.
5. The whole process of conducting the proceedings of abortion-related cases as those falling under the Chapter on Homicide (of the Country Code, 2020) is against the fundamental concept and principles of human rights. In most developed countries of the world, legal provisions regarding abortion are provided for under the laws related to reproductive health. The provisions making abortion a criminal offense disregards and makes a mockery of the women's right to reproductive health. It is imperative, therefore, to release from prisons the women who have been imprisoned because of the criminalized state of abortion and to incorporate provisions regarding abortion within the laws related to reproductive health.
6. In the context of a changed religious and social thinking which has been brought about by time, an Act to Repeal Some Criminal Cases and to Exempt from Punishment was brought into operation in 2020. The objective of the Act was to bring about timely and appropriate changes in the discriminatory legal system which was based on the narrow notions of religion, caste and sex, to reevaluate crimes and punishments on the basis of the nature of such acts and circumstances and to bring about timely changes in the impact of such laws. The Act provides that in case of activities which were decriminalized by the Act, punishments pronounced on the basis of the then provisions in the Country Code by a court of law before the entry into force of the Act, the coming into operation of the Act would exempt the person of the punishment (Section 4.1), the remainder of the punishment would be exempt in case of persons who have already completed part of the punishment (Section 4.2) and



in case the extent of punishment provided for under the schedule of the Act is less than the one under the un-amended provision in the Country Code, the lesser of the two punishments would be effective and the balance of the punishment would be exempt (Section 4.3).

In accordance with the said provisions of the Act, the Supreme Court has in *Kabir Basnet v His Majesty's Government* (2054, no. 183, decision date 2054/12/17), *Krishna Prasad Simkhada aka Govind v His Majesty's Government* (NKP 2026, decision no. 496, p. 54), *Ratnamani Padhya v Shanti Padhya* (NKP 2026, decision no. 312, p. 12) and in other cases reduced or exempted convicts from punishments. Viewed from this context, there is a distinct necessity that the Supreme Court should apply the principle of the Act in case of abortion cases which were dealt with under the Chapter on Homicide but have since been legalized.

7. Even under the principle of punishment under criminal law, it is unjust to make women face the punishment for abortion which was considered a crime before the amendment in the law. It is illogical under the general principle of punishment to keep a person under detention for a crime which is no longer considered dangerous for the general public. There is always a logical and justified basis behind any provision for punishment for a crime. Generally, the objective behind the provision of punishment for any crime is to control such crimes and to prevent the possible impact that such crimes could have in the forms of danger to life and property of the general public, to protect and secure the rights of the public, to discourage the tendencies to commit crimes and to bring about changes in the judicial system. The criminalization of abortion and provision for punishment, however, neither protect the rights of the general public nor make the judicial system resilient and able by imprisoning poor, uneducated and rural women who, because of the criminalized state of abortion, are forced to have unprotected abortion from unskilled hands. Therefore, based also on the general principles of criminal law and punishment, it is against inappropriate and unreasonable to imprison helpless women for abortion.
8. Rule 29 of Prison Regulations, 2020 provides that “up to 50% of the prison sentence may be reduced for prisoners with good behavior and conduct.” CEDAW, the women’s convention, obligates the states parties to take special measures to eliminate discriminatory provisions against women. In addition, Article 11(3) of the Constitution of the Kingdom of Nepal, 2047, provides for the possibility of adopting special measures in the interest of women. It would be in line with Nepal’s commitments to international instruments of human rights and its constitutional system to increase the percentage of prison term that could be reduced in case of women and to release women serving terms for abortion and related offenses.

Abortion is not a crime, it is women’s human right related to reproductive health. It should be considered rather unfortunate that in this changed context wherein abortion is legalized, there are women forced to serve terms for abortion and crimes created because of the banned state of abortion. Based on the principle, legal and logical reasoning above, abortion should be dealt with from the perspective of women’s right to reproductive health. Taking into consideration Nepal’s commitment to international human rights instruments including the women’s convention as well as the constitutional system, and to protect and promote reproductive health as women’s human rights, we appeal that women serving terms for abortion or related crimes be released immediately either by the exercise of authority by His Majesty under Article 122 of the Constitution of the Kingdom of Nepal 2047 or through a cabinet decision.

## MEMORANDUM SUBMITTED TO HIS MAJESTY THE KING ON BEHALF OF IMPRISONED WOMEN\*

*An appeal for the release of women imprisoned for abortion and related charges*

The eleventh amendment of the Country Code, which came into effect on Ashoj 10, 2059, accepts abortion and reproductive rights as women's human rights and guarantees women the right to abort. However, even under this changed context of legal acceptance of abortion, we the undersigned have been forced to serve time for the same "offense".

The reality is that while the state charged us of homicide, and we have been sentenced to life imprisonment, many of us, in fact, had miscarriages. In many instances, it is possible that miscarriages happen because of accident or poor mental and physical health of women. Since pregnancies happen in many instances as a result of rape and in other instances as a result of incestuous rape in the absence of husbands in the homeland, women are under a lot of pressure to abort as an alternative to enduring the humiliation and social stigma. We were imprisoned as a result of a law that disregarded women's right to reproductive health, but unfortunately, have not been released even after abortion has been legalized. In addition, several of us have been forced to stay behind bars for abortions performed after the change in the law. It is ironic that even after abortion has been accepted as a legal conduct, because of the delays on the part of the government to frame necessary procedural rules—to regulate abortion—in line with the intent of the legislature and the government's inability to manage the services, we have been forced to stay behind bars.

As a signatory to several international instruments of human rights, Nepal has expressed its commitment to fulfill the obligations under those instruments. The Constitution has guaranteed the right to equality, the amended law has accepted abortion as an element of the right to reproductive health, and acting on a petition filed by *Forum for Women, Law and Development* to release women imprisoned for crime of abortion, the Right Honorable Prime Minister has issued instructions to his subordinates to immediately take initiatives to release women serving time for abortion. However, the irony is that despite all these, we are left with no other avenue than to serve time in prisons.

Law should be for justice, and justice should be felt and perceived. However, we have been deprived of the opportunity to realize in practice the reproductive right provided for under the law. It is highly unjust from legal and humanitarian points of view that women are forced to serve terms based on a judgment that was arrived at by a biased mindset, on the basis of unscientific investigation and action procedure and the now non-existent law which was directed against women. In many instances, there was an absence of a competent legal representation for the accused woman.

It is unjust and irrational that a person is forced to face the consequences of an act that was illegal under a law of the past, which has since been amended to declare the conduct legal. In the changed context of legal recognition of abortion, we sincerely appeal that for the protection and promotion of women's human rights and for the practical realization of the rights provided for by the amended law, we, the poor and uneducated women serving terms for abortion and related offences, be released immediately.

\* Due to confidentiality reason, we are unable to publish women's name and their signatures.

# गर्भपतन र गर्भपतन प्रतिबन्धित भएबाट सिर्जित अभियोगमा कारागारमा रहेका महिलाहरूलाई मुक्त गरो

- के तपाईंको कोही आफन्त बलात्कारको शिकार भएको छिन् ?
- गर्भपतन प्रतिबन्धित भएको कारण बलात्कारबाट सिर्जित अनिच्छित गर्भ बोकी रहन बाध्य छिन् ?
- अनिच्छित गर्भधारण गरेबाट जन्मिएको शिशु हत्याको अभियोगमा बन्दी जीवन बिताउनु परेको छ ?
- गर्भपतनको आरोपमा तपाईंको आफन्त पनि जेल जीवन बिताउन बाध्य पारिएको भए तपाईं के गर्नु हुन्थ्यो ?
- अधिराज्यभरका विभिन्न जेलमा बन्दी जीवन बिताई रहेका कूल महिलामध्ये १८ जना महिला गर्भपतन र गर्भपतन प्रतिबन्धित भएबाट सिर्जित अभियोगमा कैदमा परेका छन् र १ जना महिला धरोटीमा छुटेकी छिन् ।

सोचुस त, तपाईंको कोही आफन्तले अकारण बन्दी जीवन बिताउनु परेको भए के गर्नु हुन्थ्यो ? तपाईंको कोही आफन्त बलरूकुत भई अनिच्छित गर्भ बोक्नुपर्ने स्थिति भएको भए स्वीकार्नु हुन्थ्यो ? पक्कैपनि तपाईंलाई यी कुरा सहाय हुने थिएनन् । तपाईं न बिना कारण बन्दी बस्नुहुन्थ्यो न अनिच्छित गर्भ बोकिराहनु हुन्थ्यो । तपाईं पक्कै जबरजस्ती थोपरिएको गर्भलाई पतन गराउनु हुन्थ्यो । यदि त्यसै हो भने यीनै कारणबाट अरु कोहि कारागार पर्छन् भने तपाईंको जिम्मेवारी के हुन्छ ? पक्कै पनि उनीहरूको रिहाइको लागि आवाज उठाउनु तपाईं हामी सबैको दायित्व हो । किनकी, गर्भपतन महिलाको प्रजनन स्वास्थ्यको अधिकार हो । मुलुकी ऐन, २०२० मा २०५९ साल असोज १० गते भएको एचारी संशोधनले गर्भपतनलाई वैधानिकता प्रदान गरिसकेको छ । नेपाली समाजले समेत गर्भपतनलाई महिलाको अधिकारको रूपमा स्वीकार गरिसकेको छ ।

१२ हप्तासम्म गर्भवती महिलाको सहमतीमा, जबरजस्ती करणी एवं शाहनाता करणीमा १८ हप्तासम्म र गर्भवती महिलाको ज्यानमा खतरा पुग्न सक्ने वा शारीरिक वा मानसिक स्वास्थ्य खराब हुन सक्ने वा विकलाङ्ग बच्चा जन्मने संभावना भए वरु चिकित्सकको सल्लाहमा जहिलेसुकै गर्भपतन गराउन पाउने सुविधा नेपालको कानुनले दिएको छ ।

‘अपाङ्ग तालिम लिन कटारी भएको थिएँ । त्यहाँ बिदी सँग बस्थे । एक रात म सुतिराखेको थिएँ, अचानक ऊ भुवालाबाट भित्र छिरेयो । उसले मलाई जबरजस्ती करणी गर्‍यो । उसको



धम्कीका कारण कसैलाई केही भन्न सकिन । केही समय पछि धाडा मयो, म गर्भवती भएको रहेछु । मैले उसलाई भने । तर, उसले बच्चा जन्मेपछि फाल्दिनु भयो । मैले त्यसै गरे ।’

सिन्धुली जिल्ला अदालतका जिल्ला न्यायाधीश समञ्ज बलाकार याद सिर्जितअपाङ्गीत गर्भ

जुटेको स्थितिमा ती महिलाहरूले आफूलाई निर्दोष सन्तित गर्न प्रायः असमर्थ नै छ ।

कतिपय मुद्दामा अभियुक्त महिलाहरूको लफ्ठेबाट कानुनी प्रतिनिधित्व समेत हुन सकेको छैन । उनीहरूलाई यस्तो स्थितिमा भएको फौसला स्वीकार्न बाध्य बनाइनु प्राक्कृतिक न्यायको सिद्धान्त समेतको विपरित हुन्छ ।

गर्भपतन तथा गर्भपतन प्रतिबन्धित भएबाट सिर्जित अभियोगमा हाल कारागारमा रहेका महिलाहरू स्वस्वीको कथन (testimony) बाट १०-१५ प्रतिशत महिलाहरूले मात्र जातक गरेको अभियोगमा तथा अन्य सबै मुद्दाहरू गर्भपतनसँग सम्बन्धित छन् । कतिपय मुद्दाहरूमा त तात्कालीन कानुन अदालती फैसलाले गर्भपतन (गुण ल्यायो, शिशु हत्या र जातक गरेको जस्ता अवधारणामा स्पष्टता हुन नसकेको कारण गर्भपतनको अवस्थामा पनि शिशु ल्याएको सजाय भोग्न बाध्य पारिन्छन् । कतिपय महिलाहरू सामाजिक लज्जामा बाट बन्न जङ्गलमा, अरुटेरी टाढामा बच्चा जन्माउने, पेठ काडासमा बस्ने जस्ता कार्यले जन्म पश्चात पनि बच्चा मरेका वा भ्रूणनाश भएको अवस्थाहरू घिबामान छ ।

गर्भपतन सम्बन्धी कानुन निर्माण भई कार्यान्वयनमा आइसकेको पनि एक वर्ष नै सम्को तर ऐनद्वारा तोकिएको सेवा र शर्त सरकारले अर्भे जारी गर्न नसकेकोले सेवा भने अर्भे शुरू हुन सकेको छैन । २०५९ साल असोज १० गते गर्भपतनसम्बन्धी कानुनमा लालमोहर लागिसकेपछि पनि सातजना महिलाहरू गर्भपतन वा गर्भपतन प्रतिबन्धित भएबाट सिर्जित अपराधमा कानुनी कारवाहीमा छन् । कानुनले छुट दिइसकेको कुरामा, कानुन र कार्यान्वयन गर्ने निकायमा रहेको असुधारणागत असम्पत्ता, अनभिज्ञता र अपयथ/अनुसन्धान एवम् कारवाही प्रक्रियामा हुने पूर्वोग्रही मानसिकताको परिणाम निर्दोष नागरिकले सजाय भोग्नु पर्ने स्थितिको सिर्जना गरिनु हुन्छ । कानुनी राज्यको अवधारणाअनुसार पनि कानुनमा भएको असम्पत्ता एवम् अपराधाबाट अपराध नै हुन

नसक्ने कार्यलाई अपराधको रूपमा लिनु हुँदैन । तर गर्भपतनसँग सम्बन्धित अपराधमा आरोपित महिलाहरूले यस सिद्धान्तद्वारा प्रत्यत अधिकारको उपभोग गर्न पाएका छैनन् ।

ग्रामीण परिवारमा गर्भपतनलाई अर्भे चारीधिक हिसाबले हेरिन्छा उनीहरूमाथि मुद्दाको दायरादेखि अन्तिम फौसलामम्म सामाजिक कलक र भेदभावको व्यवहार गरिन्छ । कसैको समस्यालाई कलकको रूपमा हेर्नु अत्यन्त दुर्भाग्यपूर्ण छ ।

## कारागारमा रहेका महिलाको स्थिति

- ०५ प्रतिशत महिलाहरूले केवल १५ दिन ३५ वर्ष लक्ष छ ।
- ४५ प्रतिशत महिलाहरूले विपश्चय उपरि परित्कार बाटै झरेको छ ।
- ०५ प्रतिशत महिलाहरूले अत्यन्तै शिक्षाबाट वञ्चित छन् ।
- १५ प्रतिशत महिलाहरूलाई कुनै प्रकारको शिक्षा थाहा छिन् ।
- ५० प्रतिशत महिलाहरूले कानुन/गुन्धार पछि घरेको विकल्प स्वीकार गर्छन् ।
- १० जना महिलाहरूले उच्च लक्ष्य कर्मचारीको रूपमा छुट्टेका छन् ।
- ५५ प्रतिशत महिलाहरूले जमानती लक्ष्यबाट छुट्टेका छन् ।

स्रोत: महिला, कानून र विकास मन्त्र (FWLD)

अर्को तर्फ, गर्भपतनको प्रक्रियामा महिला एकलै सलम हुने भन्ने पनि होईन, पुरुषको सलमता उत्तिकै हुने गर्दछ । कतिपय मुद्दाहरूमा स्वयं पुरुषहरूले भ्रम अवस्थामा वा बच्चा जन्मेपछि मात्र विवश गरिरहेका हुन्छन् । यस प्रक्रियामा कारणीको रूपमा रहेका पुरुषहरूले सजाय पाएको उदाहरण निकै कम रहेको अवस्थामा नै रहेकाएकी पनि छ । परम्परागत रूपमै महिलाहरूलाई विवेद गर्ने हाम्रो सामाजिक संरचनाले महिलाहरूलाई यहाँ पनि छोडेको छैन । गर्भपतन गराउने महिलाहरू आरोप लागेदेखि नै निषेधित हुन्छन् । उनीहरूको मुद्दाको कुनैपनि प्रक्रियामा परिवारले सहयोग गर्ने गरेका छैनन् । न त उनीहरूलाई बन्दी जीवन काटेर आएपछि सामान्य मानवीय व्यवहार नै गर्ने गरिन्छ । के उनीहरू सधैं निषेध लक्ष्य नै हुन त ? के महिलाहरू सबै प्रताडित भई रहने ? अब यसको उत्तर दिनुपर्ने बेला आएको छ ।

गर्भपतन महिलाको प्रजनन अधिकार

हो । विश्वका अधिकांश विकसित मुलुकहरूमा गर्भपतनलाई प्रजनन स्वास्थ्यसम्बन्धी कानुन अन्तर्गत राख्ने गरिएको छ । गर्भपतनसँग सम्बन्धित मुद्दालाई मुलुकी ऐन, ज्यानसम्बन्धी महलअन्तर्गत राखी कारवाही र किनारा गर्ने प्रक्रिया स्वयं नै मानव अधिकारको सिद्धान्त र अवधारणा विपरित पनि छ ।

हामीकहाँ गर्भपतनसँग सम्बन्धित अपराधलाई कानुनले फौजदारी अपराध मानि सजायको व्यवस्था गरिनुले महिलाको प्रजनन स्वास्थ्य अधिकारको उपेक्षा र उपहास गरेको छ । त्यसैले गर्भपतनलाई फौजदारी अपराध मानि कैदमा रहेका ती महिलाहरूलाई मुक्त गरी गर्भपतनलाई प्रजनन स्वास्थ्य कानुन अन्तर्गत राखिनु पर्छ ।

नेपाल अधिराज्यको संविधान, २०७२ को ११३(३) ले महिलाहरूको हकमा विशेष व्यवस्था गर्न सकिने उल्लेख

गरेको छ । कारागार व्यवस्थापन नियमावली, २०२० मा खास परिस्थितिमा बन्दीको सजायमा छुट गर्न सकिने उल्लेख गरिएको छ ।

गर्भपतन अपराध होइन, प्रजनन स्वास्थ्यसम्बन्धी महिलाको मानव अधिकार हो । गर्भपतनले कानुनी मान्यता पाइसकेको, अवस्थामा गर्भपतन तथा गर्भपतन प्रतिबन्धित भएबाट सिर्जित अभियोगमा महिलाहरू अर्भे कारागारको यतना भोग्न विवश हुनु ज्यादै दुःखपूर्ण हो । त्यसैले, प्रजनन स्वास्थ्यलाई महिलाको मानव अधिकारको रूपमा संरक्षण र सम्बर्द्धन गर्न नेपाल अधिराज्यको संविधान, २०७२ को धारा ३५ (२) एवम् १२२ बमोजिम मन्त्रपरिषद्को सिफारिसमा श्री ५ बाट गर्भपतनसँग सम्बन्धित अपराधमा सजाय पाई कारागारमा रहेका महिलाहरूलाई अविलम्ब कैदमुक्त गर्ने हार्दिक अपील गर्दौं ।

महिला, कानून र विकास मन्त्र (FWLD)  
सेक्टर चय र रिजल्टिभ राइट्स (CRR)

आइएस (PAS)

**F**orum for Women, Law and Development (FWLD) has been continuously working for the protection and promotion of women's reproductive health right and for the release of women imprisoned on charges of abortion and abortion related offences since its inception. FWLD identified 65 women in different prisons of the country imprisoned on abortion and abortion related offences in 2001 and initiatives were taken to release them. Following this, all the prisons were re-visited in June 2003 with the support of IPAS and CRR to update the status of the women in prisons for the offence mentioned above and identified 59 women (one on bail) in different parts of the country.

Different strategies were followed to release the women and as an outcome 54 women were released from the prisons from July 2003-January 2005. There are still many women who are in prisons. Hence concerned stakeholders as well as organizations/institutions working for the issue needs to come together and work in collaboration for the release of remaining women and for their social inclusion.

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