



NEPAL

# DECRIMINALIZATION OF ABORTION IN NEPAL



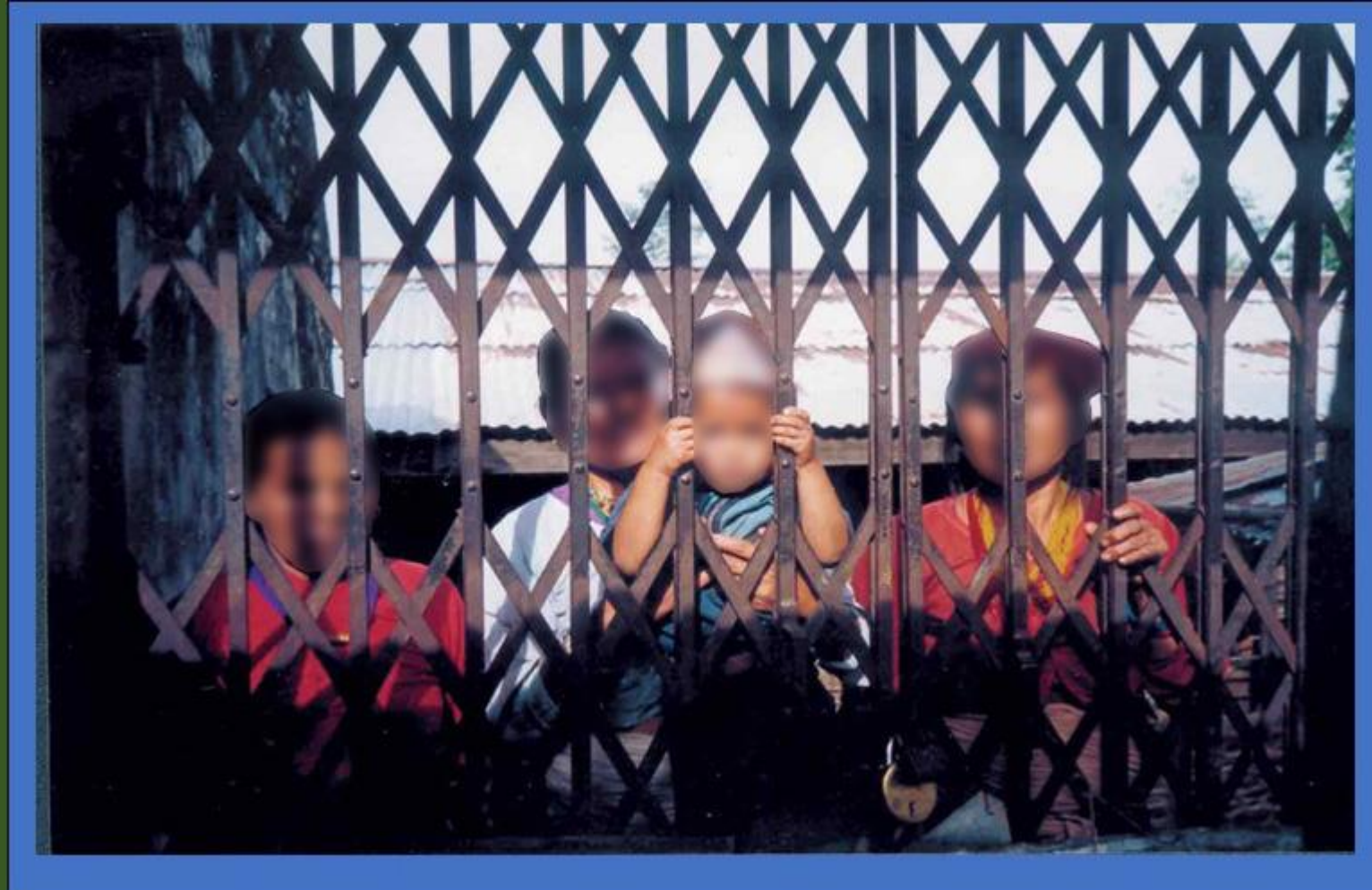
Working for non-discrimination and equality

Sabin Shrestha

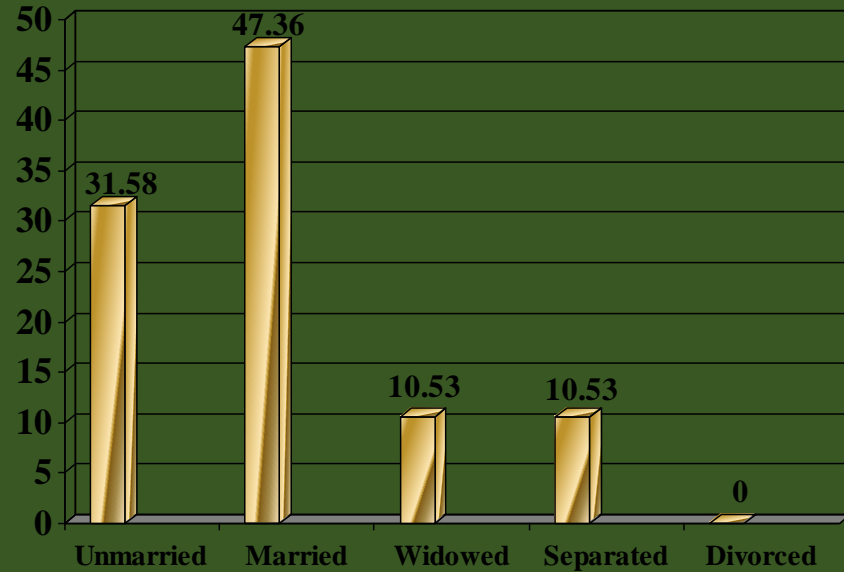
# **Criminalization of Abortion in any circumstances Prior 2002**

- Denial of right to choice and reproductive health right
- High maternal Mortality rate (539 at 100,000), 50 percent of that due to unsafe abortion
- Complications due to unsafe abortion/Septic infertility

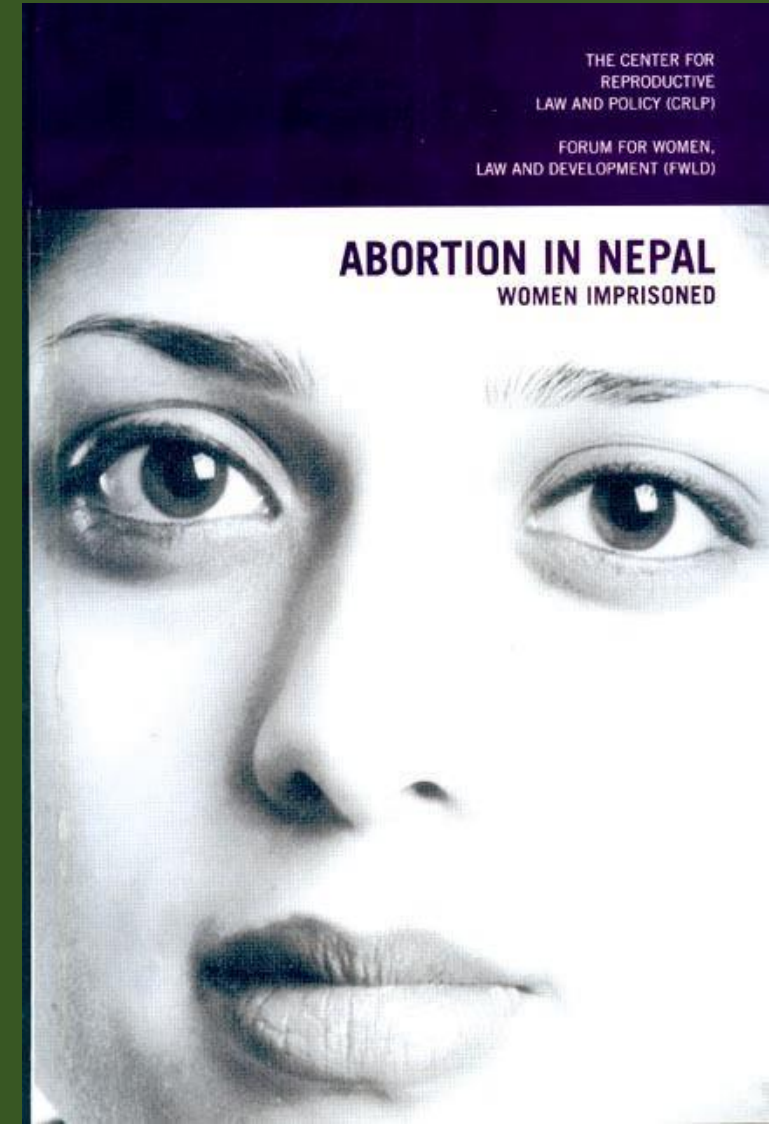
Women were criminalized and imprisoned (20 percent of women in prison were due to abortion related offence)



# Women Imprisoned



65 Women were in Prison





**"My wife would not have died if our country had services for safe and legal abortion. Therefore, the only tribute for my wife will be the legalization of abortion in Nepal."**

# **Eleventh Amendment of Country Code Passed by the Parliament on March 14, 2002**

- Abortion is legal up to 12 weeks of pregnancy
- Abortion is legal up to 18 weeks of pregnancy in case the pregnancy is due to rape or incest
- Abortion is legal anytime in case the pregnancy poses danger to the life of pregnant women or to her physical or mental health or fetus infomality
- Abortion is criminalized if performed on the basis of the identification of sex/under coercion.

## Royal Seal on Country Code Eleventh Amendment on 26<sup>th</sup> September, 2002

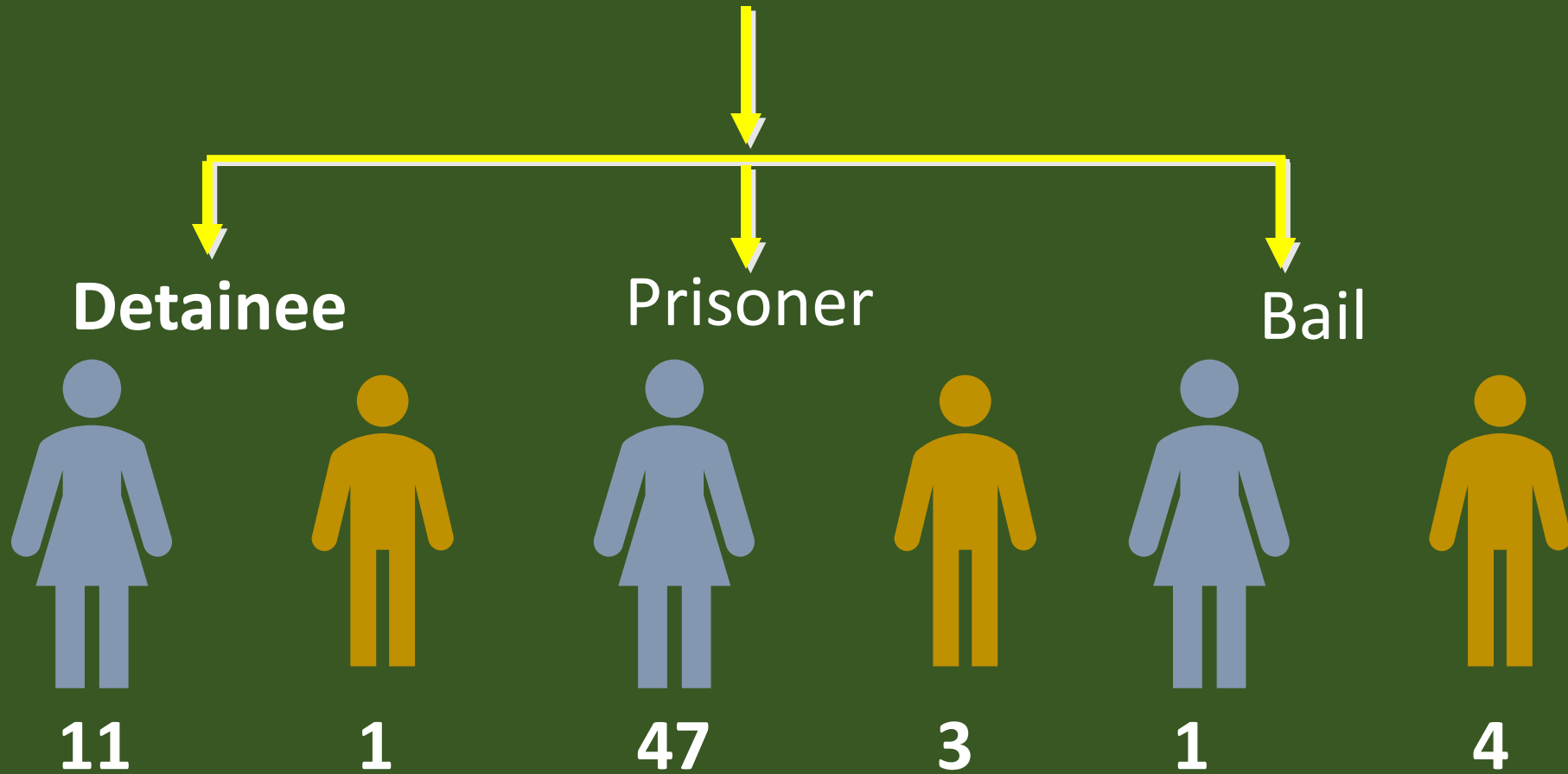
No services available even after legalization due to non-adoption of procedure

Litigation for bringing Abortion Service Procedure

Adoption of Abortion Service Procedure on 25<sup>th</sup> December, 2003



# Status of Abortion Cases (June 2003)



(7 new cases)



# 32 Women were released who were in prison on Charges of Abortion and Related Offences through FWLD's intervention

# महिला बन्दी मुक्त !

देशान्तर सम्वाददाता

काठमाडौं । श्री ५ महाराजाधिराज ज्ञानेन्द्रवीरविक्रम शाहदेवको ५७ औं शुभजन्मोत्सवको अवसरमा गर्भपतन एवं गर्भपतन प्रतिबन्धित भएबाट सिर्जित कसुरमा सजाय भोगिरहेका खोटाङ कारागार शाखाका २ जना, कैलाली कारागार शाखाका १ जना र सदरखोर डिल्लीबजारका १ जना गरी कानुनी कार्वाही भैरहेका ४ जना महिलाहरू बन्दीको सजाय माफी

उनलाई पनि छोडिने भएको छ । प्युठानको अर्को एक मुद्दा स्वयम् जिल्ला अदालतले पुनरावेदन अदालत बाड लगी प्रस्तुत गरेको छ । सम्बन्धित निकायले जानकारी दिएअनुसार सो मुद्दालाई प्राथमिकता दिई शीघ्र निर्णय गर्दै सर्वोच्च अदालतमा राय सदरको लागि पठाइने भएको छ । महिला कानून र विकासमञ्चको पहलमा सो मुद्दाहरूको कारवाहीमा शीघ्रता ल्याइएको थियो ।



तस्वीरमा देखिएका दुई महिला हातै कैद मुक्त भए ।

भई कारागार मुक्त भएका छन् ।

त्यसैगरी पाल्पा कारागार शाखाका २ जना महिला बन्दीहरू मुक्त भएका छन् । जसमा एक महिलाको मुद्दा तीन वर्ष कैद राय सहित साधकको लागि पुनरावेदन अदालतमा पठाइएको थियो । तर ती महिला बन्दी साधकको लागि राय पठाएको समयभन्दा बढी कैदी जीवन

यसैबीच महिला कानून र विकास मञ्चले श्री ५ बाट गर्भपतन एवं गर्भपतन प्रतिबन्धित भएबाट सिर्जित कसुरमा बन्दी जीवन बिताइरहेका महिलाहरूको बाँकी कैद सजाय माफी भएकोमा प्रशन्नता व्यक्त गरेको छ । श्री ५ को सरकार मन्त्रपरिषद्, गृह मन्त्रालय र कारागार व्यवस्थापन विभागलाई सो रिहाइका लागि पहल गरिदिनुमा धन्यवाद व्यक्त गरेको

# **Landmark Decision of Supreme Court to Enhance Abortion Right**

- **Laxmi and Forum for Women, Law and Development (FWLD) vs Office of the Prime Minister and the Council of Ministers *et. al.***

# Decision of the Court

- issued an order of Mandamus to make necessary arrangements about removing disparities in service fees and introducing free service for needy women
- issued an order of Mandamus to resort to extensive dissemination of news for public awareness to remove the existing traditional notions about abortion prevalent in the society and inform the service seekers about its proper and responsible use
- issued a directive order to make separate and adequate law on abortion in the standard of the provisions about reproductive health contained in the international human rights law, removing it as a part of criminal law

# Fact Finding Study in Abortion Cases

In 2017 CRR and FWLD conducted a fact-finding study in 16 districts of Nepal by reviewing of case files.

It revealed that between 2011 and 2016, 53 abortion-related cases were registered in the district and high courts.

Of these cases, 13 were against women for ending their pregnancies; five of those women were convicted, and four of the five were imprisoned.

In the cases of the five women who were found guilty, they were unaware of the legal exceptions to the penal provisions on abortion and lacked information about facilities where safe abortion services were available.

This 2017 study revealed that the criminalization of women for undertaking abortion beyond the legal conditions is aggravated by the lack of clarity in the law, biased mindset of law enforcement agencies against abortion as a crime, stigma against women obtaining abortion, and lack of family support and legal representation, resulting in the prosecution of women.

# REPRODUCTIVE HEALTH RIGHT IN NEPAL



Constitution of  
Nepal has  
guaranteed  
reproductive  
health rights



Supreme Court  
has  
interpretation  
Abortion Right is  
an important  
component of  
Reproductive  
Health Right



Safe  
Motherhood  
and  
Reproductive  
Health Rights  
Act was enacted  
on September  
18, 2018

# ABORTION LAW IN NEPAL



Pregnant woman shall have the right to seek safe abortion up to **12** weeks of pregnancy

---

Up to **28** weeks of pregnancy if there is danger to the life of a pregnant woman or her physical or mental health may deteriorate

---

Woman in case the conception is a result of **rape** or **incest**

---

Listed health services provider will provide safe abortion services to the pregnant woman in a listed health institution fulfilling prescribed standards

# UN CEDAW Committee



NEPAL

## SHADOW REPORT ON SIXTH PERIODIC REPORT OF NEPAL ON CEDAW

2018 October

*Submitted by*

CEDAW SHADOW REPORT PREPARATION COMMITTEE  
(SRPC)

*Co-ordinated by*



Working for non-discrimination and equality  
FWLD



HRTMCC, CEDAW Committee

**38(b) : Abortion is criminalized in the State party, whereas estimations indicate that 62 per cent of unplanned pregnancies end in abortion and that more than half of those abortions are conducted clandestinely, endangering the health and life of the mother**

**39(b) : Amend the Safe Motherhood and Reproductive Health Rights Act to fully decriminalize abortion in all cases, to legalize it at least in case of risk to the health of the mother, in addition to the cases for which it is already legalized, including in cases of rape, incest, severe fetal impairment and risk to the life of the mother, and allocate sufficient resources to raise awareness of safe abortion clinics and services**

# Joint Submission in UPR Process



## JOINT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF NEPAL

37TH SESSION OF THE UPR WORKING GROUP  
OF THE HUMAN RIGHTS COUNCIL

### *Submission by*

**Center for Reproductive Rights (CRR)**  
Email address: [asiaprogram@reprorights.org](mailto:asiaprogram@reprorights.org)  
Website: [www.ReproductiveRights.org](http://www.ReproductiveRights.org)

**Forum for Women, Law and Development (FWLD)**  
Email address: [fwld2013@gmail.com](mailto:fwld2013@gmail.com)  
Website: [www.fwld.org](http://www.fwld.org)

**Justice and Rights Institute- Nepal (JuRI- Nepal)**  
Email address: [jurinepal@gmail.com](mailto:jurinepal@gmail.com)  
Website: [www.jurinepal.org.np](http://www.jurinepal.org.np)



CENTER *for*  
REPRODUCTIVE  
RIGHTS



During 47th session of UN Human Right Council on July 8, 2021, Nepal's UPR 3rd cycle report was adopted by Working Group on Universal Periodic Review. Nepal has accepted following recommendations relating to sexual and reproductive health:

**Recommendation No.159.135 Decriminalize abortion and concretely protect the rights and sexual and reproductive health of women and girls (by France)**



# Law, Justice and Human Rights Committee



The Law, Justice and Human Rights Committee of House of Representative had called a meeting on 26 July 2021 to discuss about decriminalization of abortion.

The Committee has provided strong recommendation to decriminalization of abortion to Ministry of Health, Ministry of Law and Ministry of Women.