



MANJU AND OTHERS V. NEPAL

Women attempting to access modern contraceptives in Nepal face numerous barriers. Those in rural and marginalized communities have access to fewer hospitals and clinics and are therefore less likely to enjoy access to modern contraceptives. Those who are able to reach the district hospitals and local health centers are often unable to obtain services or information due to a number of factors: limited hours of service; inadequately trained staff; a limited range of contraceptive methods; a lack of safeguards for protecting confidentiality; and insufficient counseling on contraceptives, their proper use, and potential side effects. These barriers effectively deny Nepali women the right to contraceptive information and services, exposing them to a high risk of unintended pregnancy. It is estimated that one in four pregnancies among women between ages 15-49 in Nepal are either mistimed or unplanned.¹

Article 20(2) of Nepal's Interim Constitution guarantees women's reproductive rights as fundamental rights.² The Interim Constitution also guarantees the rights to health, freedom from gender-based violence, and privacy as fundamental rights. In recent landmark cases—namely, *Lakshmi and Others v. Government of Nepal*³ and *Prakashmani Sharma and Others v. Government of Nepal*⁴—the Supreme Court of Nepal recognized women's reproductive rights and acknowledged women's right to self-determination in relation to their reproductive functions, which encompass pregnancy and childbearing.⁵ In addition, the government of Nepal has ratified international treaties protecting women's reproductive autonomy, including the Convention on the Elimination of All Forms of Discrimination against Women.

Why this case is important

Pregnancy has a profound impact on women's lives. Therefore, it is crucial that women be able to exercise their right to decide whether and when to become pregnant and give birth. *Manju and Others v. Government of Nepal* is the first case to be filed in the region that seeks legal accountability for a government's obligation to ensure women's access to contraceptive methods, information, and services. The case highlights the high risk of unintended pregnancy among women in Nepal, particularly those in rural and marginalized communities, due to the persistent unmet need for modern contraceptives.

This case argues that the government has yet to ensure what is legally guaranteed to all Nepalese women: essential reproductive health care services, of which contraceptive access is a crucial part. The petition asks the Supreme Court to instruct the government to ensure universal access to a broad range of modern contraceptives and related information and services at all levels of the health system. Although more than six years have passed since Nepal recognized reproductive rights as fundamental rights, the government has yet to implement adequate programs and infrastructure to ensure these rights. This case relies on the government's own data and the findings of independent field research, conducted with support from the Center for Reproductive Rights.

However, despite these obligations and commitments, access to contraceptive information and services remains low. In fact, official data reveal a slight decline in the use of modern contraceptive methods, from 44.2% in 2006 to 43.2% in 2011.⁶ The unmet need for contraception is highest among adolescent girls, rural women and those residing in Nepal's western development region.⁷ Guided by Millennium Development Goal 5, which requires states to take steps to improve maternal health by ensuring universal access to reproductive health services, including contraception, the government has set a target to increase the country's contraceptive prevalence rate to 67% by 2015.⁸ The disparities in access to contraception and persistent barriers to access indicate the need for continued focus on this goal.

Petitioners

*Manju and Others v. Government of Nepal*⁹ has been filed jointly by eleven co-petitioners, including two women from Devichaun, one of the numerous villages in Nepal where, as the petition highlights, barriers to access to contraceptive information and services are persistent and where women often experience unintended pregnancies. These individual petitioners are members of a local women's cooperative and have been joined by several public interest litigation and reproductive health advocacy organizations.¹⁰ The defendants named in the case, include among others, the Office of the Prime Minister and Council of Ministers; the Ministry of Health and Population; the Ministry of Finance; the Ministry of Women, Children and Social Welfare; the Ministry of Federal Affairs and Local Development; and the Ministry of Information and Communication.

Claims

The petition asserts that the government's failure to ensure access to contraceptive methods, information, and services amounts to a violation of women's constitutionally and internationally protected rights. It argues that contraceptive services fall squarely within the scope of constitutional rights guaranteed by article 20(2) of the Interim Constitution. Building on Supreme Court jurisprudence, the petition links the lack of contraceptive access to the prevalence of unintended pregnancies and to a range of reproductive health harms that the government is legally obligated to prevent. It argues that the state's failure to ensure access to a full range of contraceptive methods, information, and services constitutes discrimination, in violation of the Convention on the Elimination of All Forms of Discrimination against Women. It also alleges violations of the rights to life and privacy as protected under the International Covenant on Civil and Political Rights. Finally, it alleges that the government's

failure to ensure the availability, accessibility, acceptability, and quality of contraceptive methods and services constitutes a violation of the right to health as protected under the International Covenant on Economic, Social and Cultural Rights.

Remedies

The petition requests orders from the Supreme Court instructing government ministries to establish the services and infrastructure needed to ensure women's right to contraceptive information and services and to remove barriers to contraceptive access. It calls for the government to take the following measures:

- Guarantee the availability of at least five types of modern contraceptives (short- and long-term) in all local health care facilities;
- Ensure that health care centers provide modern contraceptive information and services at all times during the official working day;
- Ensure the availability of trained health professionals, the dissemination of information, and the provision of counseling services;
- Ensure that women in all regions of Nepal—particularly those located in rural and remote areas and belonging to marginalized groups, including adolescents—receive access to contraceptive information and services; and
- Provide adequate funding to ensure the availability of contraceptive methods, information, and services.

Current Status

The Supreme Court has designated *Manju and Others v. Government of Nepal* as priority litigation because it concerns women's fundamental rights. On September 9, 2013, the day after the case was filed, the Court issued notice to the government asking it to respond to the claims. The first oral hearing has been scheduled for April 3, 2014.

Endnotes

- 1 GOVERNMENT OF NEPAL, MINISTRY OF HEALTH AND POPULATION DIVISION, NEPAL DEMOGRAPHIC AND HEALTH SURVEY 2011 90, Table 6.5 (2012).
- 2 NEPAL (INTERIM) CONST. arts. 16(2), 20(3), 28.
- 3 Lakshmi and Others v. Government of Nepal, Decision No. 8464, N.K.P. 2067, (Vol. 9) at 1551 (2009) (unofficial translation by the Center for Reproductive Rights) [hereinafter Lakshmi and Others v. Government of Nepal].
- 4 Prakashmani Sharma and Others v. Government of Nepal, Decision No. 8001, N.K.P. 2065 (Vol. 8) at 956 (2008) (unofficial translation by the Center for Reproductive Rights) [hereinafter Prakashmani Sharma and Others v. Government of Nepal].
- 5 Lakshmi and Others v. Government of Nepal, *supra* note 4, para. 25; Prakashmani Sharma and Others v. Government of Nepal, *supra* note 5, para. 11.
- 6 NEPAL DHS 2011, *supra* note 2 at 97, Table 7.4.
- 7 MILLENNIUM DEVELOPMENT GOALS, NEEDS ASSESSMENT, FOR NEPAL 2013 50 (2013).
- 8 *Id.* at 49.
- 9 Manju and Others v. Government of Nepal, Writ No. 070-WO-0194, S.C. Nepal (2013).
- 10 These organizations are Justice for All; Forum for Women, Law and Development; Pro Public; Public Interest Law Advocacy and Litigation Nepal; Justice and Rights Institute-