

Lakshmi Dhikta Case Summary and Translated Excerpts

Lakshmi Dhikta v. Nepal (2009)

Forum: Supreme Court of Nepal

Decided by: Justice Kalyan Shrestha and Justice Rajendra Prasad Koirala

Writ petition number: WO-0757, 2067 (2007)

Petitioners: **Lakshmi Devi Dhikta**, Dadeldhura; Forum for Women, Law and Development, represented by **Sapana Pradhan-Malla**, **Meera Dhungana**, and **Lok Hari Bashyal** (also representing themselves); **Melissa Upreti**, Gyaneswor, Kathmandu; **Sharmila Parajuli**, Women's Legal Aid Clinic, Bhaktapur; **Om Aryal**, Bhaktapur; Pro-Public represented by **Rama Pant Kharel**; and **Purna Shrestha**, Kathmandu.

Defendants: Prime Minister and his office; Ministry of Health Population and Environment; Ministry of Law and Parliamentary Affairs; Ministry of Women, Children and Social Welfare; Ministry of Local Development; Law Reform Commission; Interim Parliamentary Assembly; Health Service Department; Family Health Division; National Aids and Sexual Disease Control Center.

Pleading attorneys for the petitioners: Purna Man Shakya; Narendra Prasad Pathak; Meera Dhungana; Prakashmani Sharma; Kabita Pandey; Sabin Shrestha; and Lok Hari Bashyal.

Facts in brief:

Lakshmi Dhikta, a mother of five, was forced to give birth for the sixth time as a result of not being able to pay the required Nepalese rupees 1130 (approximately \$20) for a legal abortion in a government hospital. She simply did not have the money to pay for the service; she was too poor.

Translated excerpts of the decision:

Question under consideration: Is abortion a woman's right?

"Pregnancy is looked upon as the source of human creation and a process for continuing the human race. From this point of view a pregnancy is a symbol of motherhood. Since every human being's origin can be traced to an embryo or fetus it is important to protect it." Keeping this significance of the fetus in mind, the court notes that some believe that the fetus is equivalent to human life, that to protect the fetus is to protect human life and to destroy the

fetus is to destroy human life. On the other hand, there are others who hold the view that while the fetal phase is an important moment in time for human life, the fetus exists inside the mother's body, it cannot exist without the mother and due to the many risks to a mother's health and life from a pregnancy, a fetus cannot be given more importance than the protection of the physical and mental health of the mother. A fetus is able to exist only because of the mother; if we grant the fetus rights that go against the mother's health or well-being it could create a conflict between the interests of the mother and the fetus, and even compel us to recognize the superiority of the fetus, a situation that would be against the mother. It is not possible to put the mother's life at risk to protect the fetus which is why a legal framework for abortion has been established.

Once a pregnancy is established, as the fetus develops, it takes on the form of a life, but in order to equate the fetus with life at any stage of development, aside from medical evidence, there must be something in the law that grants legal recognition to this status. Neither does science nor the law recognize the existence of a human being until birth. Our constitution does not anywhere speak of the rights of a child that has not been born.

Here the court refers to *Roe v. Wade* and says that in this case, the United States Supreme Court decided that it could not recognize the fetus as a human life.

Citing *Christian Lawyers Association of South Africa and others vs. Minister of Health and Others* which involved a legal challenge to the Choice on Termination of Pregnancy Act claiming that it violated the constitutional guarantee of the right to life of all persons, the court noted that the Constitutional Court of South Africa held that "the fetus cannot be treated as an individual person ..."

Citing an Austrian case from 1974, which involved a legal challenge to a piece of legislation that sought to remove legal barriers prohibiting abortions in the first trimester, the Court noted that "the Austrian Constitutional Court held that it is not possible to recognize an unborn person as a person and the right to life guaranteed by the constitution does not include any rights of the fetus."

Viability

"The term "fetus" refers to a phase of development that takes place within the womb prior to human birth. A fetus assumes the status of a child only when born alive after being in the womb for a certain period of time or after reaching a certain stage of development within the womb. If an infant is born dead after completing gestation or if it suffers demise during the process of being born we do not consider it a human life. Life is attained when there is a live birth from the womb of a mother, other than in this situation, the entity remains a fetus. Even in situations where the fetus is capable of life outside the womb if it suffers demise in the

process of being born, it is not considered to be a (human) life – it is important to understand this distinction.”

“Since our constitution and laws do not indicate when fetal life begins and since they do not provide for the recognition of rights of the fetus or create an obligation to protect any such rights, there is no legal basis for recognizing the fetus as a human life. If the fetus were to be recognized as a (human) life and if the fetus and the mother were to be granted separate personalities, even if the mother’s physical and mental health were in jeopardy, in order to ensure that her life did not jeopardize the existence of the fetus, its independent status would have to be recognized till the final stage of the mother’s life. Even if the mother’s existence were in jeopardy, she would be forced to tolerate the risk to her life in order to protect the fetus, or, only after determining the course of action necessary to protect the fetus would steps ultimately be taken to save the mother’s life. These arguments are not practical.”

“Because the fetus is dependent on the mother and owes its existence to the mother it cannot be recognized as a separate personality. If the fetus is to be recognized as a human life, those who oppose a woman’s right to abortion must be able to provide a satisfactory explanation of when a fetus becomes a human life, which they have not been able to do so far. This type of complex, scientific, philosophical or policy matter, particularly the question as to when life begins cannot be answered by the court in the absence of a legal basis in the constitution and other laws, and hence this makes it more necessary to understand properly the differences between a fetus and a human life.”

“What we do know is that a fetus does not have a separate existence and it can only exist within a mother’s womb. That’s why, even if we do recognize a fetal interest, we cannot say that it shall prevail over a mother’s interests. The protection of the fetus has its own special place; the fetus is important to the pregnant woman too. As such, instead of looking at the fetus’ interests and the mother’s interests as two separate things, the fetus’ interests should be viewed as a crucial part of the mother’s interests. In the context of this discussion arises one serious consideration: in light of the state’s duty to protect its citizens and since population is a key component of statehood, the protection of pregnancy becomes important.”

Forced pregnancy

“A fundamental question that arises is whether in the name of protecting the fetus, a mother can be forced to continue a pregnancy and give birth through the imposition of restrictions on her interests, health and happiness. In other words, can a mother terminate a pregnancy at any stage of fetal development in accordance with her own wishes and should she be allowed to do so? This is a very important question. Different social and legal institutions have tried to address these questions from different perspectives. In situations where, for instance, a

mother's life is at risk, or where the fetus suffers from an impairment that takes away the possibility of it surviving independently after birth, where the pregnancy results from rape, and if the pregnancy occurs while infected with HIV, many countries permit legal abortion. Aside from legally permitting abortions on these grounds, many countries permit abortion in the first three months or twelve weeks on request.

In Nepal as in many other countries, a woman can obtain a safe and legal abortion within the first three months or twelve weeks as provided in section 28 (b) of the National Code. The purpose of legally recognizing a woman's right to abortion is to ensure a woman freedom from unwanted pregnancy, to enable her to live her life according to her own her own free will, to ensure her livelihood, to free her from having to take on an inappropriate burden and to enable her to exercise her right to self-determination. After three months, as the fetus develops and the pregnancy progresses the procedure for abortion becomes more difficult, and the risks to the woman's health increases, hence the law creates certain limits on abortion. Particularly, if the fetus has reached a point of development whereby it has the capacity to survive outside the womb, since in this situation it is appropriate to protect the fetus, in some countries, a mother is not given the right to an abortion on request in these situations and it may be criminalized. In fact, this is considered to be in the interest of both the mother and the fetus. “

Just like other people or men, women too possess human rights which is why they have the freedom to live with equality, liberty, to pursue happiness and to live with self-respect. “

Prior to the eleventh amendment, abortion was fully restricted and criminalized. Till then, according to these provisions, due to the criminal punishments prescribed for abortion, many women who became pregnant as a result rape were forced to continue their pregnancies, many suffered legal consequences and were forced to suffer in jail for undergoing abortion as they tried to hide their pregnancies due to social embarrassment or when they resorted to abortion as a result of not being able to continue their pregnancies for social reasons. From the point of view of compliance with international norms, this situation seemed both inappropriate and unusual. Although these pregnancies were not a consequence of women acting alone, the entire burden of the prosecution for abortion fell on women and the men did not fall within the purview of the law. Allegations of abortion were mostly made against illiterate and low-income women from rural areas. Due to the feminization of poverty and the criminalization of abortion, although unsafe, desperate women were forced to clandestinely resort to abortion procedures as a last resort. As a result, unsafe abortion became a leading cause of maternal mortality in Nepal.”

Nepal is known worldwide as a country with a high incidence of maternal mortality due to unsafe abortion. This is a serious problem in countries where abortion is criminalized; even in countries where abortion is permitted in certain circumstances but services have not been

provided adequately, unsafe abortion has become a leading women's health concern. Whether due to the criminalization of abortion or the lack of a proper system for providing safe abortion services, women's lives and human rights are affected in many different ways. This is why it is important for women's rights to proscribe abortion only to a limited extent, to protect pregnancies except when they are unwanted and to create a safe environment for those seeking abortion services.

As noted above, during the time prior to the eleventh amendment, abortion was criminalized in all circumstances and women were forced to endure a situation of being deprived of their right to life and their fundamental human rights. As such, the eleventh amendment has proven to be a milestone.

Following the United States Supreme Court's decision in *Roe v. Wade*, 1973, which involved a legal challenge to the criminalization of abortion, even though abortion was given the status of a constitutional right there have been those who have opposed it on the grounds of legislative or political activism. Since in Nepal the right to abortion has been recognized on specific grounds through the eleventh amendment bill which was enacted through a political process involving legislators the question whether a woman has a right to abortion is no longer a legal question but an intellectual one; in other words, this undisputedly a right guaranteed by law.

Since the enactment of the eleventh amendment bill, Article 20 of the Interim Constitution of 2067, has made separate provisions for women's rights. Rights relating to reproductive health have been included in Article 20 as a result of which they have been reinforced in Nepalese law.

Article 20 of the Constitution provides as follows:

Article 20: Women's Rights

- (1) a woman must not be discriminated against in any way on the ground that she is a woman
- (2) every woman shall have the right to reproductive health and rights relating to reproduction
- (3) no woman shall be subjected to physical, mental or any other form of violence and such acts shall be punishable by law
- (4) sons and daughters shall have equal rights to ancestral property

Reproduction is a unique aspect of women's health. Throughout their lives, women are impacted by their reproductive health in various ways such as menstruation, pregnancy, childbirth, post maternity health complications, problems relating to their reproductive organs,

menopause and related physical and mental health issues, which are all topics relating to reproductive health. Reproductive rights are considered to be an inseparable part of women's human rights and within that the right to abortion is seen to hold an important place.

From a legal rights perspective, reproductive health is an important human rights concern for women.

The right to freedom, including the right to live with dignity, and the right to personal liberty are some of women's most important human rights. The right to health, reproductive health, family planning, to marry freely or found a family, to have or not to have children, if having children to decide how many and when, the right to decide to give birth and to space births, within that the right to abortion in accordance with the law, the right to privacy, the right to non-discrimination, the right to freedom from cruel, inhuman and degrading treatment or punishment, the right to freedom from sexual violence, the right to benefit from scientific progress and research are all related issues.

Among these, as far as reproductive rights are concerned, the right to self-determination is seen to hold a special place. Within this figures the right to plan one's family, which includes the right to information about and access to methods of family planning and the right to use such methods to prevent pregnancy; women are also considered to have the right to make decisions relating to reproduction free from interference. This means that a woman is the master of her own body and whether or not to have sexual relations, to give birth to a child or not to give birth, and how to use her body are matters in which a woman has the final say. Traditionally in a marriage it is not unusual for a woman to make decisions with the consent of her husband or on the basis of mutual understanding but it is very important for a woman to have the final say about how her body shall be used and whether or not she will have children.

Some countries only allow a woman to undergo abortion with the consent of her husband, or require minors to have the consent of their guardians but this leads to a situation where men can do what they want with their bodies while women do not have the freedom to do the same. Husbands do from time to time assert their paternal rights in which case there must be due consideration for a wife's rights as a mother. If it is accepted that in order to fulfill a husband's desire to become a father, a woman must act against her own wishes and assume the physical dangers and potential adverse outcomes of pregnancy then she loses all control over her own body as a result of which she is explicitly and implicitly forced to accept a continuous position of subordination. Just as a wife cannot force a husband to become a father or engage in sexual intercourse similarly, a man cannot force a woman to do the same.

If this standard is not accepted, women will find themselves in situations where they will be forced to tolerate sexual and physical violence, they may be forced to continue or discontinue a

pregnancy based on the sex of the fetus, they may be forced to become pregnant or forced to terminate a wanted pregnancy; or they may be forced to surrender themselves to undesirable means of preventing pregnancy. In this sense, the right to self-determination in relation to abortion is an inseparable part of the right to reproductive self-determination.

Pregnancy is an inseparable component of reproductive health. The ability to become pregnant is a unique aspect of women's health. From the point of view of women's rights, it is appropriate to view this as a woman's right, necessity and contribution. Pregnancy is a unique capacity possessed by women and a woman's issue; hence it is for this reason that it is also a woman's right. The fact that a woman has the natural capacity to become pregnant does not mean that she has to become pregnant. In order to protect this unique ability of women there is a need for appropriate rights and services and protections to advance these rights.

If women's reproductive rights are not protected, they may be forced to become pregnant and to continue unwanted pregnancies in which case instead of being respected as rights holders they will be forced to bear the responsibility of human reproduction and transformed into mere instruments for that purpose. Although to become pregnant is a noble human act, when forced there is no other situation that can be more burdensome and condemnable. If the ability to decide whether or not to carry a pregnancy is denied, the outcome cannot be considered to constitute the fulfillment of one's highest duty and instead of a right it becomes a form of slavery. This is why it is important for a woman to be the master of her own body, and to have the right to decide whether or not to become pregnant, whether or not to continue a pregnancy, how to space pregnancies and in relation to that, aside from voluntarily seeking counseling or consent, to be able to make the final decision and to implement the decision must be recognized. From a human rights perspective, in order to ensure the birth and development of free human beings, it is important for the mother to be free. That a mother's servitude cannot be a source of freedom for her children is a matter worthy serious consideration.

For a woman, the child born from an unwanted pregnancy is a continuous burden as a result of which aside from not being good for the mother and the child, there can be certain social consequences. It is of utmost importance to work towards ensuring that pregnancies are wanted and to ensure legal and other protections for such pregnancies.

Question under consideration: What is the relationship between women's human rights, legal rights and abortion?

Unless reproductive rights are recognized as women's rights, there can be no certainty about women's right to physical and sexual freedom and as a result the right to become pregnant

transformed into a responsibility; women will have to suffer in silence practices such as forced abortion and on the other hand the criminalization of abortion. Consequently, this dehumanization of women's health could lead to negative outcomes as a result of which women would not be able to live freely with self-respect, equality, they would not be able to participate fairly as competent, educated and active members of society and exercise their right to life; the rights guaranteed to women under international treaties, the constitution and other laws would become unachievable. If to willingly become pregnant is the most noble form of human service, a forced pregnancy can be considered a grave conspiracy against a woman's freedom.

While pregnancy is considered a noble act, when forced the same pregnancy can become a cause of violence against women; it can also become a cause of inequality between men and women based on men's rights and women's responsibilities. Due to the practice of categorizing women based on whether or not they have been pregnant or are able to bear children or not it seems necessary to recognize the right of women to have the final say so that they can be free from such discrimination.

Reproductive health and reproductive rights stand in relation to one another. It is only when one's reproductive health is in a good state that one can fully enjoy their reproductive rights; similarly, it is only when one has reproductive rights that their reproductive health can be fully protected. This relationship has been wisely recognized through Article 20 of the Constitution.

In a broad sense, reproductive health and reproductive rights encompass the decision to have children and not to have children and within that must be recognized the right of a pregnant woman who does not wish to bear children to discontinue the pregnancy. Otherwise, the right to freely make decisions concerning reproduction, which falls within the scope of reproductive rights, becomes narrow which in turn makes reproductive rights meaningless. Reproductive rights cannot be understood as creating an obligation to become pregnant; reproductive rights include within their scope the right not to become pregnant. Just as an affirmative right to undertake a certain activity inherently includes the freedom not to engage in such an act, reproductive rights must be considered the same way.

Reproductive rights and violence against women

Another important aspect of reproductive health and reproductive rights is protection from gender-based violence. Forced pregnancy and the forced continuation of pregnancy both constitute violence against women. Reproductive rights include the right to terminate a pregnancy and the right to protect a pregnancy; the right to abortion is applicable in cases of unwanted pregnancy or in difficult circumstances. It does not include the right to prevent a

pregnancy in all circumstances and it is necessary to consider the right to abortion within appropriate limits.

Rape, forced pregnancy, forced prevention of pregnancy, and forced abortion constitute acts of violence against women. It is necessary to protect women's reproductive health and reproductive rights in order to ensure women's freedom from any form of physical, mental and other form of violence.

Reproductive rights and privacy

Reproductive health relates to a woman's personal life and as such information relating to any act or event pertaining to her reproductive health must be within her control. A woman's reproductive health status including information about whether or not a she has had an abortion or whether or not she is pregnant are personal matters that warrant legal protection and can be exposed only in accordance with the law. If this information is not protected, women may become unable to live with respect, encounter discrimination, or suffer violence. Article 20 which guarantees reproductive rights and Article 28 which guarantees the right to privacy are related to each other and complement each other.

Question under consideration: Do the petitioners have a right to accessible and affordable abortion services?

A right or benefit guaranteed by law must not be limited to certain people or a particular class. It is mandatory for the state to make such rights and benefits equally accessible. The main foundation of the rule of law is equality and justice. Without equality there cannot be justice and without justice there cannot be equality.

The purpose of creating guarantees of equality, freedom, justice and other fundamental rights in the constitution and legislation is not merely declaratory and people must be able to benefit from them in practice. The inclusion of these guarantees in the constitution and legislation does not automatically lead to the enjoyment of these rights. In order for this to happen, the state must raise awareness about the law, establish the necessary preconditions to implement laws, create institutions, build the capacity of those working in these institutions, ensure the distribution of services according to people's needs through proper programs. A primary responsibility of the state is to enable individuals to exercise their rights according to their needs. As long as the situation of those who are unable to take care of themselves, exercise their rights guaranteed by law, and fully represent themselves remains unchanged, till that

point, it is not possible for the republic to prosper while the people are illiterate; for the republic to be strong while the people are weak; and for the republic to be active while the people are helpless. Likewise, in a situation where the people do not have even the least information about their rights, knowledge about how to exercise their rights and the financial means to do so, the state cannot achieve its ideals.

In order to make abortion services affordable, it is necessary to increase the number of licensed services providers and medical institutions and to ensure their distribution across the country. Instead of being concentrated in one place, it is necessary for such services to be spread out so that the maximum number of people can benefit from them. In the same sense, the fees charged for abortion services by government facilities and non-governmental health providers should be commensurate with their ability to pay and fair.

The right to abortion can be realized only if it is accessible and affordable.

It is seen that whether in the public sector or the private sector, fees are determined by providers who tend to do so in their own favor. In determining the service fee it is necessary to consider whether the amount is within the scope of the person's ability to pay. This could indeed lead to variations in service fees. The most important thing, however, is that if a woman who needs an abortion is unable to obtain one simply because of the unaffordability of the service, it is not only unjust but also an irony. If a woman who needs an abortion is unable to do so just because of practical difficulties or unaffordability, and as a consequence forced to continue an unwanted pregnancy and give birth, then it must be recognized that the benefit created by law has not been attained by its intended beneficiaries.

In this case, Lakshmi Devi is seeking a remedy for not being able to obtain a legal abortion as a result of not being able to pay the Nepalese rupees 1130 demanded by the health facility. The government claims that health services are provided to indigents for free. In which situations and on what grounds abortion services shall be provided for free is not clearly stated in the law, which is necessary. Unless such fundamental questions are answered with certainty a situation will arise where those in need of health care do not seek services or become unable to do so. Unless the grounds, process and locations where services are available for free are established with certainty and such information reaches people, abortion services cannot be considered to be accessible and affordable.

Government institutions such as the ministry of health and the health service department must monitor the quality of services and the appropriateness of fees and establish standards and fees that ensure equitable access.

Although half the world's population comprises of women, the fact remains that governments have not established health systems and health budgets with women's reproductive

rights/health in mind as a result of which the budget allocations and women centered health facilities are very limited; most hospitals are geared towards responding to men's health needs and women are forced to seek services in such facilities.

As far as the legal basis for ensuring the accessibility and affordability of such services is concerned, considering they have been recognized as fundamental rights, it is the primary obligation of the state to prioritize the implementation of these rights.

The court notes that the government has pointed out that it has trained 359 doctors, authorized the registration of facilities in Rukum, Rolpa, Salyan, Terathum, Kalikot, aside from creating access to services in 70 districts, which sounds promising, but it is important to consider the situation from the point of view of the distribution of services and consumption of services and examine how many trained providers are actually in the districts and in how many facilities services can actually be obtained. It is also important to look at the districts where services are not yet available and to take steps to make them available soon.

It is necessary to ascertain how many women have been able to obtain abortion services in the districts to determine whether services are fairly distributed.

The government's responses fail to demonstrate that the right to abortion guaranteed by law is being exercised by women and that the necessary infrastructure has been developed for ensuring the accessibility of services.

To the extent that abortion is a service required only by certain individuals, there is a question as to whether the government must provide it for free. Abortion is a health concern; the right to health has been guaranteed as a fundamental right and should be regarded as a survival right. In addition to recognizing the fundamental right to social justice, the directive principles of state policy establish the protection of women's rights as an important responsibility of the state. This is why the right to abortion and pregnancy related concerns cannot always be regarded as individual problems and separated from the public duties of the state.

Question under consideration: Is there a need for a separate law?

When the constitution makes it mandatory to introduce legislation for the implementation of a particular fundamental right then the only way that it can be put into practice is through the speedy development and implementation of legislation. Once the constitution guarantees a fundamental right, the right to exercise it and to obtain a remedy if it is violated becomes a person's inherent right. Consequently, it also becomes the responsibility of the legislature to establish the appropriate preconditions for the enjoyment of the right. The government cannot

prevent the enjoyment of a fundamental right by failing to introduce an appropriate law or delaying the process.

Prior to the eleventh amendment, extremely traditional views on abortion prevailed and it was severely criminalized. As a result, women were prosecuted and punished. In a sense, a woman's unique reproductive capacity was used against her in a conspiratorial way.

Even till now, abortion is a part of the Chapter on Life. This makes it seem like by criminalizing abortion the fetus has been given the status of a human life. Since the constitution and other existing laws have not recognized a fetal right to life before birth, it does not seem appropriate to make abortion related issues a part of the Chapter on Life.

The Chapter on Life does not define life. Following the eleventh amendment, with the incorporation of new provisions on abortion in section 28 (b), by recognizing the right to safe abortion on request within the first 12 weeks of pregnancy it is clear that the fetus is not recognized by law as a human life. It does not seem appropriate to incorporate something that does not fall within the definition of human life into the Chapter on Life.

With the recognition of reproductive health and abortion as rights in this changing context, it is necessary to adopt a new way of thinking that is suitable to the establishment of these rights.

Abortion is a new serious issue that has evolved through greater public consciousness and it is important to convey the correct message to the public. As such, it is no longer appropriate to treat it as an issue of criminal law and retain it in the Chapter on Life. As long as it remains part of the Chapter on Life, abortion will carry the stamp of a crime even though it has been decriminalized in specific circumstances.

At present, section 28 (b) of the Muluki Ain only prescribes the circumstance in which abortions may be performed and contains sanctions for any unlawful interference with this right. Abortion entails many considerations that are not currently dealt with by the law: techniques and procedures for abortion, the competencies and duties of abortion providers, registration and legitimacy and accreditation of abortion facilities, provisions dealing with confidentiality of information relating to abortion and privacy, cost schemes, awareness about legal abortion, abortion counseling services, legal recourse and remedies. The current provisions in the Muluki Ain represent a crime and punishment approach. It is because the current legal framework is inadequate that the government has had to "make do" with the Abortion Regulations of 2060. In fact, the legal form of the current regulations is not even clear. If the current situation prevails, there is no knowing how many more regulations will have to be introduced from time to time with which the government will have to "make do." This issue cannot be resolved in a comprehensive and sustainable way through the application of an inadequate legal framework. Reproductive health and abortion are legal concerns; the right to abortion be fully realized only

through a definite legal framework that defines the related rights, duties and processes and is implemented through appropriate programs. It is objectionable and extremely unsuitable to keep the provisions on abortion – this newly recognized right - within a harsh and rigid criminal law framework as currently done in the Chapter on Life. As such it is necessary to introduce comprehensive and special piece of legislation to address the issue.

Issue under consideration: Compensation

In a context where reproductive rights and, as part of that, the right to abortion is guaranteed by the constitution and other laws, if a woman is prevented from exercising her right and forced to continue an unwanted pregnancy, it is clear that her rights have been violated. In a situation where a pregnancy has to be continued and a child is born, it is not possible to reinstate a woman's rights.

Compensation can be one of several remedies provided for the impact felt by a woman of having to raise a child and of having been forced to carry a pregnancy to term.

If providers and health facilities do not take this right seriously and if steps are not taken to ensure that they are ready and equipped to provide abortion services, there is a strong possibility of widespread violations and women may be continuously denied the ability to exercise their legal right. Issues relating to pregnancy should not be viewed as being limited to the fetus and relate more broadly to women's physical and mental health.

Concerns about abortion do not relate only to the question of whether or not to give birth to the fetus, and whether or not abortion services are available; abortion is an issue that has broader implications for women's overall health. It is necessary for there to be a proper system for legal remedies when a woman suffers as a result of her right to abortion being violated if she is denied an abortion or if the quality of services is poor. In terms of legal remedies, there must be appropriate provisions for punishment of the guilty, compensation for the victim and other facilities for the victim's health.