Volume 3, Issue 3 ISSN 2582-743X

Healing with Dignity: Post – Abortion Healthcare of Rape Survivors

Ekta Angela Lal
LL.M. (International Law),
South Asian University

Aprajita
LL.M. (International Law),
South Asian University

Abstract

A woman should not have to fight for her life after fighting for her dignity. Post-abortion healthcare is vital for mental, physical, and emotional well-being, making it a fundamental aspect of reproductive health. Globally, women encounter structural obstacles, and rape survivors in particular deal with challenging circumstances. After enduring profound psychological and physical trauma, a woman should not experience further distress due to inadequate medical care. Denial of post-abortion healthcare increases the risk of 'maternal mortality' and 'long-term reproductive health issues' along with persistent psychological distress.

If we peruse the international human rights instruments, post-abortion healthcare is treated as a Fundamental right under international law. The ICESCR mandates the 'right to the highest attainable standard of health', obligating the states to provide complete reproductive healthcare under Article 12. Similarly, CEDAW calls for 'equal access to healthcare services, especially for the survivors of sexual violence' under Article 12. Moreover, Article 7 of ICCPR further stresses that denying essential medical care can constitute degrading and inhuman treatment.

Ensuring post-abortion healthcare signifies upholding women's dignity, autonomy and human rights. Also, healthcare should be accessible to those in need while overcoming stigma. Legal support should also be provided to the women so that they can invoke their rights in cases of non-performance, as such support offers psychological confidence for the survivors and addresses critical gaps in the reproductive healthcare arena. This issue requires ensuring legal support for best realisation of women's fundamental rights.

Introduction

Rape is one of the most severe violations of an individual's bodily integrity, autonomy, and dignity. The international law substantiates that the act of rape is not only a personal bodily crime but also a grave violation of human rights, demanding legal, psychological and medical redress. The Rome Statute on the International Criminal Court upholds rape as "a crime against

Volume 3, Issue 3 ISSN 2582-743X

humanity". It further defines "forced pregnancy" as unlawful confinement of women to make them forcefully pregnant in furtherance of violating international law[1].

International tribunals such as the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia have, on various occasions, reiterated the most accepted definition of rape. One such example is the case of Prosecutor v. Akayesu, where the ICTR held that while there is no uniform definition of rape in International Law, it can be understood as a tool for intimidation, degradation, humiliation, discrimination and destruction of a person. Judges further held that rape is committed when there is physical invasion of a sexual nature on a person under coercive circumstances[2]. The International Criminal Tribunal for the former Yugoslavia considered in its judgment in the Furundžija case that rape required "coercion or force or threat of force against the victim or a third person[3].

The Convention on the Elimination of All Forms of Discrimination Against Women demands that states take appropriate measures to eliminate any discrimination against women, including that caused by sexual assault[4]. The Convention on the Rights of the Child states that the parties must protect children from sexual exploitation and sexual abuse resulting from coercion[5].

While it is clear that in international law, particularly in the human rights framework, there exists a clear consensus condemning rape, unwanted pregnancy remains a lesser-discussed evil. A rape survivor is already traumatised by the brutal violation of her physical and mental well-being; an undesirable and unexpected pregnancy can further deteriorate her condition. In many cases, the survivors are minors with no knowledge of how to proceed with such a harrowing situation. While most nations presently have legal frameworks affirming abortion in the situation mentioned above, this article emphasises the need for safe abortion and mandatory post-abortion healthcare, especially for rape survivors, as an obligation under international human rights law.

Need for Post-Abortion Healthcare

For a survivor, the forceful carrying of a pregnancy can not only be burdensome but also a painful reminder of the brutality of the crime inflicted against her. This scenario can be detrimental to the health of the resulting mother and the child. While the sexual autonomy of rape survivors is already disregarded by those who cause such suffering, the situation further worsens when they are deprived of their reproductive autonomy. The full realisation of

[1] *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 7(1)(g), 7(2)(f).
[2] *Prosecutor v Jean-Paul Akayesu* (Judgment) ICTR-96-4-T (2 September 1998).
[3] *Prosecutor v Anto Furundžija* (Judgment) ICTY-95-17/1-T (10 December 1998).
[4] *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 1–2.
[5] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 34.

Volume 3, Issue 3 ISSN 2582-743X

reproductive rights is tied to enjoying all human rights, respect for human dignity, and effective gender equality[6].

Many countries allow abortion solely because pregnancy results from rape. However, many countries allow abortion rights only when there is significant harm to the physical and mental health of the rape survivor. In either case, a safe abortion is vital for the survivor's well-being. The suffering of a rape survivor does not end with the abortion of an unwanted pregnancy; instead continues when she is denied post-abortion healthcare, both physical and mental.

It is an undeniable fact that inadequate healthcare provided during an abortion can result in maternal morbidity and mortality; this is further evidenced by the WHO data, which states that around 73 million abortions are carried out every year, and 45% of them are unsafe abortions[7]. Post-abortion healthcare can be termed as services that help alleviate any health-related risks associated with abortions, including mortality. It can be perceived as fundamental to the reproductive health of a woman.

It was reported by the Journal of Global Health that among the seven low and middle-income countries from 2015 to 2024, there were disparities in the capacity of providing post-abortion healthcare services. Around 50% of primary facilities in Afghanistan could provide post-abortion care services, while only 1% in Bangladesh and 8% in Nepal could. Ethiopia, a low-income country, had 34% of primary facilities that provided post-abortion care services. Regarding referral facilities, the percentage of facilities providing post-abortion care was much higher. Yet, countries like Bangladesh and Haiti had much less capacity, with only 16% and 32% respectively[8]. The data indicate that inadequate post-abortion healthcare cannot be solely attributed to a country's level of development. This is evident in the case of Ethiopia, which is a low-income country, yet, is performing substantially better than many in providing post-abortion healthcare. Hence, prioritisation of post-abortion healthcare and active implementation in the health policy framework can be ensured when a state aims at the welfare of its citizens, irrespective of the resources.

An evidence brief released by the World Health Organisation in 2022 on "Supportive law and policy environment for quality abortion care" highlighted that abortion care is adequate when it is effective and evidence-based, accessible irrespective of geography, is provided equally to all without discrimination and is safe[9]. While post-abortion healthcare services include emergency treatments for physical complications of abortions, such as haemorrhage, infections, incomplete abortion or other complications, they must ensure that these include

[6] Karen Smith, 'Access to Abortion for Rape Victims in Armed Conflicts: A Feminist Perspective' (2024) 57 *Israel Law Review* 449, 451.
[7] World Health Organization, *Abortion* (WHO, 2024) https://www.who.int/news-room/fact-sheets/detail/abortion accessed 2 July 2025
[8] S Raza and others, 'Assessing Health Systems' Capacities to Provide Post-Abortion Care: Insights from Seven Low- and Middle-Income Countries' (2025) 15 *Journal of Global Health* 04020.
[9] World Health Organization, *Towards a Supportive Law and Policy Environment for Quality Abortion Care: Evidence Brief* (WHO 2022) https://www.who.int/publications/i/item/9789240055610 accessed 5 July 2025.

Volume 3, Issue 3 ISSN 2582-743X

comprehensive counselling sessions emphasising the importance of post-abortion self-care for the physical well-being of the survivor. Further, healthcare services should recognise the mental agony that the survivor has suffered and must ensure that appropriate psychological or psychiatric services are granted to such a survivor. Adequate post-abortion healthcare appears as the ideal solution for various physical and mental injuries caused to the survivor.

Human Rights Perspective on Post-Abortion Healthcare for Rape Survivors

It can be contended that an expanded interpretation of human rights, such as dignity, equality and freedom from exploitation, can act as a shield against sexual violence. Human rights conventions also develop the right to life and dignity, which is essential for the physical and psychological restoration of a rape survivor. Enshrined in the Universal Declaration of Human Rights and, further, in the International Covenant on Civil and Political Rights, the right to life ensures that the physical and mental integrity of a rape survivor remains intact during and after abortion. In 2019, the Human Rights Committee adopted General Comment No. 36 on the right to life enshrined in the ICCPR. The comment clarified that the domestic laws on termination of pregnancy should not be such that they contravene the right to life of a woman. The states are obliged not only to provide safe abortion facilities but also to remove existing barriers. Further, and most importantly, states must work at reducing maternal mortality and providing post-abortion healthcare while ensuring confidentiality. The comment mentions that these are the most important rights when a pregnancy has resulted from rape[10].

The phrase ‘security of a person’ mentioned in Article 3 of the UDHR can be perceived as a right to secure safety from physical and psychological harm. In furtherance of this, states can ensure mandatory post-abortion healthcare to ensure the security of a rape survivor.

International human rights instruments include the right to appropriate healthcare. Article 12 of the ICESCR urges the state to ensure citizens' adequate mental and physical health and requires states to ensure medical treatment[11]. Further, Article 24 of the Convention on the Rights of the Child advocates the right to health with a special emphasis on vulnerable children, including those subjected to sexual violence[12]. A case for mandatory post-abortion healthcare for rape survivors can be arrived at once states start realising the full potential of such human rights.

There have been some specific subject matter developments ever since the instruments mentioned above were introduced. With respect to child victims, General Comment 20 to the CRC in 2016 on the implementation of rights of children during adolescence persuades the states to ensure that abortion is decriminalised and that such a girl child has access to safe

[10] Human Rights Committee, ‘General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life’ (3 September 2019) UN Doc CCPR/C/GC/36.
[11] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12.
[12] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 24.

Volume 3, Issue 3 ISSN 2582-743X

abortion and post-abortion services as well and ensure access to safe abortion and post-abortion care services, not taking into consideration the legality of abortion itself[13].

During this time, General Comment 22 was made an extension to Article 12 of the ICESCR with respect to the sexual and reproductive health of women. It is expressed the state's obligation to ensure at least a minimum level of sexual and reproductive health to women, which shall include access to quality sexual and reproductive healthcare services along with post-abortion care and counselling for those in need[14]. Comments like these have, time and again, helped elaborate the specific context of the treaty guarantees.

While General Comments were originally the concluding remarks of the self-reporting mechanism of a human rights treaty, once adopted, they act as the anchors of human rights and become a means through which the UN human rights experts can put forward their views on a particular issue arising from the treaty. General Comments can become influential instruments for norm development, and informal and formal decisions in human rights[15]. Once adopted, general comments become anchors of human rights discourse which make their way to regional and domestic judiciaries[16]. Some scholars have also suggested that General Comments can be conceptualised as informal law making instruments in promotion of human rights which act as a cure against the stagnation in economic, cultural, and social rights and against contestation in civil and political rights[17].

These instruments form a satisfactory base on which post-abortion healthcare can be mandatorily assured to a rape survivor; however, it is pertinent to note that the proportion of unsafe abortions is generally in countries that have a total ban or have restrictive abortion laws in the first place. Therefore, the primary requirement is for the states to put in place human rights-compliant abortion policies and then move towards having abortion care. Formal recognition of the reproductive autonomy of a woman is only the first step in enabling adequate abortion care, and further, a complex set of laws can follow[18].

An argument that can spring from nations reluctant to implement such policies is the non-ratification of instruments such as ICESCR and CEDAW. However, most countries have ratified these instruments, making them a universal standard of human rights. Ongoing debates

[13] Committee on the Rights of the Child, *General Comment No 20: Implementation of the Rights of the Child during Adolescence* (6 December 2016) UN Doc CRC/C/GC/20, para 60.
[14] Committee on Economic, Social and Cultural Rights, *General Comment No 22: The Right to Sexual and Reproductive Health (art 12 of the International Covenant on Economic, Social and Cultural Rights)* (2 May 2016) UN Doc E/C.12/GC/22, para 49.
[15] M Lesch and N Reiners, 'Informal Human Rights Law-Making: How Treaty Bodies Use "General Comments" to Develop International Law' (2023) 12 *Global Constitutionalism* 378, 378–401 https://doi.org/10.1017/S2045381723000023
[16] J Barkholdt and N Reiners, 'Pronouncements of Expert Treaty Bodies: From "Black Boxes" to "Key Catalysts" in International Law?' (KFG Working Paper Series, No 40, Berlin Potsdam Research Group, 2019) https://doi.org/10.1017/S2045381723000023.
[17] Lesch and Reiners (n 15)
[18] *Health and Human Rights* (2017) 19(1) Special Section: Abortion and Human Rights; Drug Control and Human Rights 69–79.

Volume 3, Issue 3 ISSN 2582-743X

about UDHR being a customary international law or not is also persistent. In this context, one needs to draw an inference from the fundamental character of the rights enshrined in these instruments[19].

In essence, for international human rights to be truly universal, there is a dire need for the state to provide women with the ability to make reproductive decisions for themselves and to implement adequate preventive and curative measures to safeguard women's reproductive health, which should at all costs include freedom from all forms of discrimination, liberty and security and finally, access to healthcare and the benefits of scientific progress[20].

Standards for Post-Abortion Healthcare

A comprehensive set of guidelines on abortion care was produced by the WHO in 2022, which made explicit mention of the need for post-abortion health care, along with adequate measures to be implemented. It conceptualised post-abortion healthcare to include follow-up check-ups and management of residual side-effects and complications. Various fatal conditions can follow if unsafe abortion is practised. These include incomplete abortion, uterine rupture, and haemorrhage, among other serious complications. Irrespective of whether an abortion is conducted in a restrictive set-up, post-abortion healthcare must always be provided in furtherance of human rights[21].

A crucial guideline given by the WHO in this respect is maintaining the confidentiality of the patient availing post-abortion healthcare, even when such abortion is illegal[22]. This guideline is critical in the context of rape survivors because having a history of physical and mental trauma can be further deepened by unwanted judgments. Preserving the survivor's confidentiality can be helpful in two ways: her privacy and autonomy can be secured, and a relationship of trust can be built between the survivor and the healthcare provider. Further, prioritising post-abortion healthcare over the legality of abortion is a progressive stance towards the well-being of a woman. Another key human rights recommendation in these guidelines is that post-abortion healthcare must be available without any threat of criminal prosecution, and the states must not require healthcare workers providing post-abortion care to furnish details in case they suspect that there has been an unlawful abortion[23].

These recommendations, however, don't provide sufficient momentum to address mental health concerns. It is not appropriate to treat mental health in isolation from physical health. Due to double stigmatisation, the psychological effects of abortion are significant when the patient has experienced rape. Furthermore, when the patient is a minor and is entirely unfamiliar with the

[19] H Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 *Georgia Journal of International and Comparative Law* 287.
[20] *Studies in Family Planning* (1993) 24(2) 73–86.
[21] World Health Organization, *Abortion Care Guideline* (WHO 2022) https://www.who.int/publications/i/item/9789240039483 accessed 5 July 2025.
[22] WHO, *Abortion Care Guideline* (n 21)
[23] WHO, *Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Persons* (2020) https://www.who.int/publications/i/item/9789240001411 accessed 15 July 2025.

Volume 3, Issue 3 ISSN 2582-743X

rigorous abortion process and the potential physical changes it may induce, the psychological effects get worse.

Suggestions

1. **Training Healthcare Workers in Trauma-Informed care**

Healthcare professionals should maintain a balance between medical skills and empathy. The importance of trauma-informed care should be reflected by respecting privacy, assuring informed consent, preventing re-traumatization, and providing easy access to psychosocial support. These have been specifically mentioned in WHO's guidance on the clinical management of rape and intimate partner violence (IPV)[24]. UNHCR proposes a similar multi-sector approach by fostering cooperation between sectors like healthcare and law.[25]

These methods also complement the international human rights legislations. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[26] ensures the right to highest possible standard of health, and Article 7 of the International Covenant on Civil and Political Rights(ICCPR)[27] forbids inhumane or degrading treatment of human beings. By merging trauma-informed components into medical training, and holding regular workshops, states can ensure that the medical professionals work in line with these global standards.

2. **Integrating Global Human Rights into National Legislation**

To ensure effective care for survivors of rape, the national legislation of states should embody essential commitments from the human rights agreements to ensure accessible reproductive care for rape survivors. Articles 12 and 16 of CEDAW, along with Article 12 of ICESCR and Article 7 of ICCPR, try to make sure that states offer reproductive and mental healthcare without discrimination. The Safe Abortion Guidelines of WHO urge the countries to provide confidential and respectful abortion care by eliminating obstacles.[28]
The UN Special Rapporteur on Torture has determined that if abortions are refused in cases of rape, it could constitute cruel, inhuman, or degrading treatment according to international law.[29] Likewise, the government should enact laws that compliment WHO and UNHCR

[24] Ibid.
[25] UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response* (2003) https://www.unhcr.org/sites/default/files/legacy-pdf/3c4d6af24.pdf accessed 15 July 2025.
[26] International Covenant on Economic, Social and Cultural Rights (adopted 16 Dec 1966, entered into force 3 Jan 1976) 993 UNTS 3, art 12.
[27] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7.
[28] WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd edition, WHO 2012).
[29] UN Special Rapporteur on Torture, 'Highly Restrictive Abortion Laws Violate Women's Right to Be Free from Torture and Ill-Treatment' *Human Rights Watch* (30 January 2020) https://www.hrw.org/news/2020/01/30/amicus-curiae-regarding-access-abortion-colombia accessed 15 July 2025.

Volume 3, Issue 3 ISSN 2582-743X

clinical guidelines like- subsidized post-abortion care, maintain victim confidentiality, implement non-blame policies, and establish legal penalties for offenders.

3. Strategic Legal Actions to Ensure Access Rights

Courts can assist governments in creating enforceable responsibilities by viewing reproductive rights as integral to the right to health and dignity. In Lakshmi Dhikta v Government of Nepal [2009], the Supreme Court that access to safe abortion is a constitutional right and mandated that government should finance for the procedures.[30] Similarly, the Constitutional Court of Columbia in C-355/2006 referred to CEDAW and ICCPR to legalize abortion in cases of rape, health threats, foetal anomalies.[31] The UN Human Rights Committee iterated that refusing abortion services in cases of rape may be counted as torture or ill-treatment.[32] Bringing together NGOs and collectively focusing on strategic litigation can compel to adopt and uphold the WHO, CEDAW and ICESCR commitments.

4. Fast-Tracking Medico-Legal Support

WHO and UNHCR advise that the collection of forensic evidence and emergency medical services should begin right at the initial point of contact, as hurdles in administration or procedures can lead to delay in care, which can make the case of survivors even more detrimental.

The Delhi High Court, in 2025, instructed hospitals to conduct abortion procedures of rape survivors without requiring identification or orders from court, and to promptly establish medical boards for situations like these.[33] Other states also implement similar actions by enshrining these mandates- streamlining medico-legal mandates into legislation, coordinated medical care along with law enforcement and child welfare agencies, with obligatory evidence preservation being the most important of all.

5. Involving Survivors and Communities to Minimize Stigma

The survivors refrain from accessing healthcare because of stigma, judgement and social exclusion. Global frameworks like UNHCR's guidelines and WHO's Inter-Agency Standing Committee (IASC) mental health protocols highlight the importance of survivor-focused

[30] *Lakshmi Dhikta v Government of Nepal* [2009] SC Nepal (Writ No 0757).
[31] Constitutional Court of Colombia, *C-355/2006*.
[32] Human Rights Committee, *K L v Peru* (2005) UN Doc CCPR/C/85/D/1153/2003.
[33] 'Delhi High Court Issues Directives to Hospitals in Cases of Rape Survivors Seeking Abortion' *SCC Online* (New Delhi, 3 June 2025) https://www.scconline.com/blog/post/2025/06/02/delhi-highcourt-directives-medical-termination-pregnancy-rape-victims-hospital-lapses-legal-news/ accessed 15 July 2025.

Volume 3, Issue 3 ISSN 2582-743X

functioning and community-involvement.[34] UN Security Council Resolution 1888 and the Rome Statute also mandate nations to include survivors in planning responses after violence.[35]

Government should work with civil society organizations to implement school-focused workshops, legal education initiatives, and campaigns led by survivors for awareness. Confronting stigma can be made easier in the society by normalizing it. Further, it can be normalized by equipping the community with positive influencers, educators, spiritual leaders, and awareness about local law enforcement authorities. Additional support systems like crisis hotlines and community counselling assist survivors in restoring trust and regaining autonomy.

Conclusion

Abortion or post-abortion healthcare is not the ultimate solution of rape, as it cannot 'un-rape' the victim. However, when the crime has already been committed, it is the government's moral responsibility to make laws that codify the crucial aspects of post-abortion healthcare. In other words, the government's moral responsibility should be codified to turn it into 'legal responsibility', too. This can be done by incorporating international human rights instruments such as the ICESCR[36] and ICCPR[37] into the domestic laws of the country or explicitly enforcing those laws.

Specific focus should be given to the 'mental health' of the victims, too, as a part of the post-abortion 'healthcare', as we're advocating for a society that treats mental health as seriously as physical health. The victim should not be left to deal with the mental health issues alone, as it can lead to harmful outcomes such as depression, post-traumatic stress disorder, and even suicidal thoughts.[38] Healthcare workers and law enforcement agencies should be trained to handle these situations effectively, as these two institutions come into contact with the victim in the early stages of the crime commission.[39]

Thus, providing post-abortion healthcare to the survivors cannot change the fact that the their bodily integrity was been violated, and that she's in immense pain, emotionally as well as physically. However, it can be seen as the first step in making the victim feel secure and protected. Firstly, she should have all the rights to abort the child safely, as the child will only

[34] Inter-Agency Standing Committee, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* (2007) https://globalprotectioncluster.org/sites/default/files/2022-05/iasc_guidelines_on_mental_health_and_psychosocial_support_in_emergency_settings_english.pdf accessed 15 July 2025.
[35] UN Security Council Resolution 1888 (2009); Rome Statute of the International Criminal Court 1998, arts 7, 8.
[36] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12.
[37] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7.
[38] World Health Organization, *Guidelines for Medico-Legal Care for Victims of Sexual Violence* (WHO 2003) Ch 6.
[39] UN Office on Drugs and Crime, *Handbook on Effective Prosecution Responses to Violence against Women and Girls* (UNODC 2014).

Volume 3, Issue 3 ISSN 2582-743X

remind her of the tragedy that was inflicted on her.[40] Secondly, she should be provided the best post-abortion healthcare so that her recovery and reintegration into society is possible without the burden of guilt or shame, but with confidence, since the rape was never her fault.[41]

[40] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 12.
[41] Rebecca J Cook, Joanna N Erdman and Bernard M Dickens, *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press 2014).