

# Legal Responsibility for Reproductive Health in Low and Middle Income

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**ABSTRACT:** *This study examines the relationship between legal accountability methods and improvements in intended sexual and reproductive health and rights (SRHR) outcomes as a scoping review. According to our definition, legal responsibility is when people or states utilize criminal law procedures to prevent or cure undesirable behaviour when the state fails to respect, defend or fulfil SRHR as stipulated in national law. Using PubMed, Scopus, and LexisNexis, we conducted a keyword search before consulting with a panel of experts for advice on further peer-reviewed and grey literature, resulting in 191 articles. Peer-reviewed empirical studies focused mostly on abortion legislation and access to abortion care, then violence against women. The majority of the articles in this category focus on the discrepancies between the law and how it is applied in real life. For example, the way a law or court decision is formulated; access to courts; disadvantages of criminal law in the given context; cultural norms; politics. States' capacity and resources; and potential for further litigation are all factors that shape the effectiveness of legal accountability efforts. There have been many articles explaining how the court may be required to bring about change and how asserting one's rights may empower one, but also explaining how legal avenues for change can be flawed instruments for bringing about fairness. With proper consideration for context, legal responsibility may be an effective component of a larger, long-term plan.*

**KEYWORD:** *Criminal Law, Health Rights, Legal Responsibility, Reproductive Health, Sexual.*

## 1. INTRODUCTION

In the context of health-related rights, efforts to demand answerability, penalties and redress in the event of a state's failure to respect, defend or fulfil such rights are often characterized as 'accountability methods.' Accountability for health is emerging as a separate area of practice and study that draws on lessons learned from the wider disciplines of transparency, accountability, participatory development, and human rights. Researchers conducted a systematic review in which they identified three primary strategies for accountability that have been applied to sexual and reproductive health and rights (SRHR) and documented in the peer-reviewed literature: social or community accountability, performance accountability, and legal accountability. Typically, methods for holding people accountable for human rights abuses depend on legislative or judicial responses to infractions. The scope of these lawsuits may vary from individual instances to strategic and public interest litigation within national legal systems, all with the goal of upholding positive rights and entitlements or providing a remedy in the event that they are violated. Over the last 25 years, health justice activism has increasingly embraced the judicialization of health-related rights as a component of the overall campaign for health justice.

This study provides a scoping assessment of the effect of legal accountability initiatives on sexual and reproductive health and rights (SRHR). Researchers and practitioners in the field of human rights dispute the long-term consequences of conventional legal accountability methods, which are mainly focused on strategic litigation. Strategic litigation is defined in this paper as litigation with an intended impact beyond a specific case, such as public interest litigation, cause lawyering, and human rights litigation. It is also defined as litigation with an intended impact beyond a specific case, such as litigation with an intended impact on broader change at the level of law, policy and practice or social discourse. Rather than being a single event, strategic litigation is a multi-year process that may take several years to build a case and proceed through the judicial system. The proof of violation must be adequate to survive scrutiny in an adversarial or inquisitorial procedure in a court of law before a case can be considered 'strategic,' since a defeat in court may result in the status quo being ossified and the matter being 'off the table' for many years[1].

In their report, circumspect researchers point to a paucity of evidence regarding the outcome of strategic litigation and other types of legal accountability efforts, as well as the impact of such efforts on health outcomes, systems, and policies, as well as their social implications, including the extent to which legal cases represent the priorities of the most marginalized. Researchers working in the field of accountability more broadly have identified specificities of SRHR that complicate accountability efforts, such as the way dominant political, religious, and

cultural ideologies about gender, sexuality, and reproduction influence the claims articulated as well as the responsiveness of duty bearers.

Critics of legal action argue that it can reflect and perpetuate dominant social hierarchies by relocating social action from communities to remote courtrooms, by de-radicalizing emancipatory movements, and by forcing advocates to rely on rights and entitlements that have already been established or that can be established in law rather than making more proactive claims. 'Legal realists' think that legislation or other forms of government action are needed for meaningful social change, and that activists should focus their efforts on influencing the legislative and policy-making processes rather than on litigation. Many researchers, including the 2019 Lancet Commission on the Legal Determinants of Health, have come to the conclusion that legal strategies can be effective in promoting equity and may be the best option available to historically oppressed populations, provided that a variety of other favorable contextual conditions are in place[2].

With this scoping study of legal accountability methods for SRHR, the researchers hoped to learn more about the relationships between legal accountability strategies and improvements in the targeted SRHR outcomes. This is accomplished via a description of the body of conceptual and empirical debates regarding when and how legal accountability accomplishes its objectives, as well as the identification of more specific research topics that may guide future growth of the subject.

### *1.1 Access to The Courts:*

It is obvious that the constitution, whether or not complainants have direct access to the Constitutional Judicial, and the manner the court system operates all influence the case law that is issued by the courts. As an example, the Constitution of South Africa declares its Bill of Rights to be justiciable and gives the courts broad discretion to hear public interest and class action claims, as well as to exercise flexible remedial powers. In a similar vein, the constitutions of many nations in Latin America include health rights and provide people who feel their rights have been infringed with relatively easier access to medical care[3].

Several authors who have written on the changing legal status of different SRH services and family law in Nepal have observed that the Supreme Court's composition and the manner in which it operates have enabled decision-making that has been in accordance with developing worldwide SRH guidelines. A forum for input from civil society and the public health community was created in the Court's decision by mandating the establishment of expert commissions that provided reports to the Court and the other branches of government, actively utilizing briefs filed by amici curiae (friends of the court), and inviting experts to testify. Informed by this information, the Court's decision-making was improved, and civil society was engaged and exposed to the Court's workings, allowing for more fast implementation of the Court's judgments[4].

### *1.2 Criminal Law:*

Violence against women, the prohibition of TBAs, as well as underage marriage and abortion, are all issues that are often addressed in criminal law. All of the articles on these subjects, with the exception of the one on abortion, addressed the social consequences of criminal law. A number of writers came to the conclusion that criminal legislation was essential but not sufficient, claiming that classifying a behaviour as illegal provided an enabling atmosphere for future efforts to prevent a practice from recurring [5]. For example, researchers discovered that while criminalization itself may not be the most effective method of preventing female genital mutilation, it does create an environment in which preventing FGM is possible. Partners for Law and Development, after reviewing case studies on the application of the child marriage law, concluded that 'the true value of law lies in opening possibilities of negotiation and dialogue'. When combined with other activities such as social services, education, law enforcement training, and public awareness raising, criminal legislation may successfully serve as a preventative tool as well as a pathway for survivors to seek justice.

In addition, researchers point out that criminal law does not always have an impact on the environment that facilitates SRHR rights violations, particularly in contexts where people do not trust the judiciary, police or the government more broadly, or where there is a lack of complementary strategies to address deeply embedded hierarchies and norms as well as to provide support to victims and survivors of SRHR rights violations. In the instance of female genital mutilation and circumcision (FGM/C), some believe that criminalizing the practice would push it underground, resulting in increased public health damage as families avoid obtaining necessary medical treatment. For those who have experienced gender-based violence, the lack of access to justice, a lack

of policies to address the underlying issues that cause violence, and the normalization of violence are all described in articles relating to VAW [6].

For those who have experienced gender-based violence, the criminal law can be immaterial. For example, anthropological study showed that attempts to teach women about their rights did not alter the gendered labor patterns that kept women and their families reliant on a male breadwinner for their livelihoods. It is also possible that survivors and their families may not want to subject their own family members to the criminal justice system in the future. The healthcare system is identified as a key entry point for people who have experienced violence in the home in some countries' policies or national strategies to combat violence against women. However, the healthcare system itself may lack the capacity to provide confidential, compassionate care and referral for people who have experienced violence in the home. Finally, humanitarian environments, particularly conflict and post-conflict settings, can present extraordinarily difficult legal, administrative, logistical, and cultural challenges for those seeking justice, as well as for those attempting to establish mechanisms to bring justice to those who have been victimized by injustice[7].

### *1.3 Capacity and Resources of the State:*

The connection between law and social outcomes is moderated by social norms and political considerations. As an additional point of concern, the majority of articles pointed to limited state capacity and resources as a significant factor in the poor implementation of both civil and criminal laws related to sexual and reproductive health and rights (SRH), though state capacity was only mentioned once as the primary source of concern. Articles described the ways in which low capacity hampered the 'roll out' or the causal chain from law to practice, such as a lack of guidance for operations or collaboration, as well as health system challenges that fell outside the scope of a specific law, such as poor roads, a lack of health-care coverage, a lack of social services, and rude treatment by healthcare providers[8].

Part of the capacity and accessibility of the health system in general is dictated by the state's ability to provide high-quality SRH services to its citizens. Several research came to the conclusion that SRH entitlements were more readily available in settings where law and policy also allowed for free services, for non-discrimination in the delivery of care, and where health facilities were more readily accessible than in other contexts. In a nutshell, they point out that when the state, as well as its services and remedies, are not operationally available to people, rights and bans on unpleasant social behaviors become less relevant[9], [10].

## **2. DISCUSSION**

Legal accountability methods are most successful when they are used as part of a larger effort to bring about change, and no paper in the review disagreed with this assertion. A comprehensive effort to change the structures that contribute to SRHR failures should also include media advocacy, social mobilization, legal education, political accountability, electoral politics, and formal communication with governmental and international bodies, with legal accountability strategies working in tandem with other strategies to achieve the best results. Comprehensive (rather than compartmentalized) methods may, in turn, affect some of the variables that determine the trajectory of legal accountability initiatives, such as cultural norms, stakeholder rights awareness, and public policy.

Meanwhile, while acknowledging its limitations, none of the authors questioned the justification for legal accountability, with many explaining that recourse to the judiciary may be necessary to effect change and that the act of asserting rights can empower individuals, foster collective identity, and alter social expectations about certain groups' "right to be heard."

But even when legal accountability efforts are successful according to traditional metrics, legal avenues for change can be ineffective tools for justice, with factors such as barriers to accessing the courts, the extent to which courts take a programmatic approach in their decision-making, and the extent to which the case at issue was intended to have a collective impact all influencing how benefits resulting from legal accountability are distributed [1].

Court judgments are often couched in limited public health and legal terms that do not fully address the socioeconomic determinants of sexual and reproductive health (SRH) or the consequences of poor SRH healthcare quality, access, and policy in the United States. To examine the implications of this limited frame, some authors employ an intersectional or reproductive justice lens, concluding that the "acquisition" or

"expansion" of rights through new case law can oversimplify complex power relations and that more powerful members of a given group, such as wealthier women, may be the primary beneficiaries of these new rights. The narrow focus on a single experience of injustice, such as IPV, fails to convey the multidimensional exclusion that many individuals are subjected to [2].

Furthermore, several writers expressly emphasized that rights and entitlements in SRH may be better realized when these and other fundamental rights are provided by a strong, affordable public sector, in accordance with the reproductive justice perspective. Justiciable rights may aid in the institutionalization of a strong public sector, but merely litigating these rights will not enough to guarantee access to services.

We discovered many significant gaps in the existing literature. For starters, we found relatively little information on the sexual and reproductive health and rights of males and non-binary individuals, as well as on legal accountability methods that attempted to involve these groups. Second, we discovered limited information on the interaction between the legislature, the executive, and the courts, despite the fact that this dynamic may be critical to understanding law-making and execution. Finally, as previously stated, none of the articles found during our first search were specifically geared at individuals with impairments.

There are many limitations to our study. Because of their very nature, scoping reviews must be simplified; articles are reduced to rows and columns in an extraction tool, which is then simplified further. We utilized coding to attempt to keep the subtle parts of each piece intact, but the process of synthesizing always results in the loss of information and insights. We acknowledge that this simplification is unavoidable, given our finding that context is critical in determining the course of legal accountability initiatives in the first place.

Second, our search technique turned up dozens of articles that investigated the relationship between law and practice. In addition, as previously stated, we included these papers because the relationship between law and practice is relevant to our research issue about the effectiveness of legal accountability methods. Having said that, it is conceivable that a different search technique might have resulted in the discovery of more publications on the subject of the connection between law and practical application. Third, we did not look for publications on the application of international human rights mechanisms since this field has received much more attention than the application of national and subnational legislation in this area.

However, there may be a dialectic between international human rights legislation and local law and court judgments in certain situations, and our omission of this area may have restricted our study in some instances. Furthermore, since our evaluation covered a diverse range of literature, we have some studies that analyze primary data as well as other articles that are based on secondary data to draw upon. It is possible that the inclusion of both would amplify biases, since certain experiences and instances will be 'counted' more than once. In order to avoid this kind of bias, we divided our results into two parts, with section 1 describing just primary data and section 2 describing secondary data. Finally, although this study is concerned with SRHR, it does not take into consideration wider domains that may be drivers of SRHR, such as pollution exposure or the freedom of association rights of stigmatized groups, such as sex workers, among others.

### 3. CONCLUSION

At both the global and national levels, assumptions regarding the function of legislation are often at the heart of agenda setting in the field of sexual and reproductive health and rights. Strategic approaches to ensuring the execution of current law, providing remedies and reparation, and reforming the law in order to make it more compatible with other laws or international norms are all included in the concept of legal accountability. This scoping review provides an essential foundation for future study by synthesizing current research and theme results on legal responsibility for sexual and reproductive health and rights (SRHR). The article should be accessible and useful by both the global health and human rights communities, as a result of our consultation of a diverse body of literature. This will set the foundation for future interdisciplinary cooperation. Our results demonstrate that legal accountability may be successful when it is implemented as part of a larger, long-term plan that pays careful attention to the circumstances. These issues of long-term strategy and context must be addressed as part of any research into legal responsibility that we do.

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