

SEXUAL VIOLENCE AGAINST WOMEN IN NEPAL.

REPORT OF RAPE CASES IN 2007.

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INTRODUCTION

In a global comparison of the status of women Nepal's gender index rates at the bottom of the South Asian scale, itself at the bottom of the world scale. Although discrimination against women in Nepal varies among various ethnic and cultural groups, women remain a disadvantaged segment in all caste-ethnic and class categories of the population.¹

There are several acts categorized as gender-based violence in the context of Nepali society, namely domestic violence, trafficking, forced prostitution, rape, incest, sexual abuse, sexual harassment, child marriage, dowry related abuses, torture for charges of witchcraft, public stripping and polygamy.

This annual report analyzes cases of rape occurred in 2007. It is based on cases reported to INSEC's regional offices through the year. The information has published on INSEC's web page *inseconline* and in the 2007 Human Rights Yearbook. Other relevant sources of information have been the OHCHR in Nepal as well as other leading women rights organization in the country. The report analyzes characteristics of the victims and the perpetrators, the access to justice as well protection under domestic and international law.

A total of 203 cases of rape involving 216 victims have been reported to INSECONLINE in 2007. Some 40 cases of sexual violence have been reported to the OHCHR-Nepal in the same period.²

¹ Shrestha Bihari, K. "Conflict Resolution Through Governance Effectiveness in Nepal", in Prasad Srestha, A. and Uprety, A., eds., *Conflict Resolution and Governance in Nepal*, Kathmandu: Nepal Foundation for Advance Studies and Fredrich-Ebert-Stiftung, 2003, at 97.

² OHCHR Nepal, 'Human Rights in Nepal. One Year After the Comprehensive Peace Agreement', December 2007, at 19-20.

VICTIMS

Regarding the characteristics of the victims, the most alarming facet is that the majority of them are girls under the age of 18. Out of 216 victims whose cases were reported to INSEC, 144 are minor girls. Similarly, the OHCHR-Nepal reported that 24 out of 38 victims were girls under 18 years old.³ For example, a 13-year-old girl of Bhimeshwor municipality was raped by a 35-year-old man on 12 March, who entered the girl's house through the window and raped her while she was sleeping.⁴ A 12-year-old girl of Paurai was raped on 11 March as when she was herding cattle alone in a nearby jungle.⁵ On November 13, an 11-year-old girl was raped and murdered; the police found her body hidden at the perpetrator's house and said that the death was extremely violent and inhuman.⁶

Particularly worrying, there were at least 16 reported cases of rape against children under 10 years old, including victims of 6 year-old. For example, a nine-year-old girl of Damauli bazaar, was raped at her house on 17 February.⁷ A nine-year-old girl of Damak municipality, living in a rented room was raped by a 20-year-old man on 25 February.⁸ A six-year-old girl of Sunkhani was raped by a 55-year-old man on 6 May while nobody was at her home.⁹

The fact that there are so many cases of rapes involving victims under the age of 18 may demonstrate that cases of rape involving adult women are simply not reported. This aspect is due of the stigmatization a woman victim of rape would often face in her own community or even in her own family. Abused children often need medical treatment and, as a consequence, the violence is easier released. Adult women victims of rape, instead, normally

³ *Ibid.*

⁴ INSEC, 2008 Human Rights Yearbook, Kathmandu, 19 Feb. 2008.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

fear they may be considered guilty and “polluted” and often do not report to anybody the abuse.

The National Human Rights Commission of Nepal considers that sexual violence against women is not recognized due to social stigmas and the difficulties they would have to face from their family once they come out with it.¹⁰ The taboos surrounding sexual violence mean that many cases of rape are unreported.¹¹ Data on the issue is hard to collect as the majority of cases remain unrecorded. This is a symptom of the culturally-based discrimination suffered by women.

On the other hand a positive change on this pattern may be underscored. Cases of rape seem to have increased since 2006. INSEC reported 183 cases of rape in 2006¹², while in 2007 it reported 203 cases. At first glance this data may be considered as negative. However, it may show a positive trend as probably it is not the number of violations to increase, but the reported cases. The fact that more women are willing to report cases of rape and sexual violence should be considered a first step of changing the discriminatory attitude against women and end the culture of impunity.

Another unfortunate aspect is that at least 4 cases have involved persons with disabilities as victims. For example, a mentally impaired woman of Aakhisalla was raped on 22 January at a distance of 10 meters from her home.¹³ A hearing impaired woman of Narayan municipality was raped on 26 January.¹⁴ This reflects the fact that within the disable people, women are particularly vulnerable from prejudice.

Cases of rape were reported also in Bhutanese refugee camps. An investigation by the United Nations High Commissioner for Refugees (UNHCR) revealed 18 cases of sexual abuse and exploitation in Bhutanese

¹⁰ *Ibid.*

¹¹ OHCHR Nepal, ‘Human Rights in Nepal. One Year After the Comprehensive Peace Agreement’, December 2007, at 19-20.

¹² INSEC, 2007 Human Rights Yearbook, Kathmandu, 2007.

¹³ INSEC, 2008 Human Rights Yearbook, n. 4.

¹⁴ *Ibid.*

refugee camps in Nepal. Victims included a 7-year old girl and a person with disabilities.¹⁵ INSEC reported that an 11-year-old girl of Bhutanese Refugee Camp in Sanischare was raped on 23 January.¹⁶ A 14-year-old girl of Bhutani Refugee Camp, Khudunabari was gang raped by fellow refugees on 24 January evening.¹⁷

PERPETRATORS

Regarding perpetrators, one of the most disturbing aspects is that many abuses have been committed by people the victims knew or even by relatives of the victim. For example, a 10-year-old girl of Swatantranagar was raped by her step father on 29 August at her own house.¹⁸ A seven-year-old girl of Dhuradanda was raped by her cousin on 22 September.¹⁹ A 14-year-old girl studying in eighth grade in Mahabishnu Lower Secondary School, Kattikedeurali was raped by her brother-in-law, a teacher of same school.²⁰ Women often suffer sexual abuses at the hands of their relatives.²¹ Home is not a safe place for women, yet women and children have no other choice than to stay at home with the perpetrator.²² Women remain vulnerable and largely dependent on men and this makes extremely difficult for a woman to report that she is being abused within her home.²³

Another alarming facet that INSEC's data shows is that the perpetrator is many times an army or police officer. For example, a Dalit woman of

¹⁵ Amnesty International and Human Rights Watch, 'Nepal: Sexual abuse reports highlight plight of Bhutanese refugees', 22 November 2002.

¹⁶ INSEC, 2008 Human Rights Yearbook, n.4, 2008.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Shrestha Bihari, n. 1, at 97.

²² Forum Asia and Women Rehabilitation Center Written Statement under Item 12 (Integration of Human Rights of Women and a Gender Perspective), Violence against Women in Nepal.

²³ 'We Can end all violence against women', South Asia Regional Campaign; SAATHI 2000; UNICEF 2001; National Network Against Girl Trafficking 2004.

Khanalthok was sexually abused by NA men on 22 April.²⁴ A 15-year-old girl of Ramghat was raped by two army personnel on 19 July.²⁵ Army officer abuse of their position of power while at the same time are confident they would easily enjoy impunity. In this situation is very difficult for a woman to seek justice as the people in charge to protect her are often the same perpetrators.

Because women are made the objects of revenge, there has been an increase of cases of gang rape. For example, in Banke, on 2 December a woman was raped by a group of five armed persons.²⁶ In Taplejung, on 18 December a group of 10 persons raped three girls, all less than 18 years old, high-school students.²⁷ Rina Kumari Yadav, 10-year-old of Fulgama was killed after rape by an unidentified group on 6 February.²⁸

JUSTICE

Most perpetrators of sexual violence escape persecution under the Nepali criminal justice system.²⁹ Access to justice for victims of sexual violence continues to be a serious problem.³⁰ It ranges from medical doctors refusing to give a medical examination in the absence of police report, the police refusing to file a First Information Report (FIR) in the absence of a medical report, to threats against the victim and her family to withdraw the accusations in the rare case that she manages to press charges.³¹

Women who do decide to come forth and demand justice face an uphill task.³² Although in a few cases individuals accused of rape have been detained, there is an increasing trend of settling the cases outside of formal

²⁴ INSEC, 2008 Human Rights Yearbook, n.4, 2008.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ 'We Can end all violence against women', n.23.

³⁰ OHCHR Nepal, n.2, at 19-20.

³¹ *Ibid.*

³² *Ibid.*, at 19.

justice mechanisms.³³ Attempts by victims of rape and sexual abuse have largely been unsuccessful in seeking redress, with police often encouraging mediation, rather than prosecution.³⁴ Through community mediation the victim receives meagre monetary compensation and the perpetrators remain at large.³⁵ For example, an 11-year-old girl of Jutpani was raped on 5 January; though the victim's father filed a complaint at the DPO on 9 January, police did not take action against the perpetrators alleging that the issue was settled between both sides after the perpetrator agreed to provide NRP 30,000 to the victim.³⁶ While mediation may be appropriate in some circumstances, the lack of punishment reinforces the climate of impunity.³⁷

INSEC's data shows that normally no action is taken against the perpetrator or when he is arrested, he is released after few days. In almost half of cases the perpetrator is not being charged of any criminal offence. For example, a 12-year-old girl of Hasandaha was raped by Gopal Rayamaghi on 24 January; though the victim's family filed a FIR at the Area Police Office on 25 January demanding action against the perpetrator, the perpetrator was not arrested by the end of the year.³⁸ A 13-year-old girl of Bhimeshwor municipality was raped by Ashok Kumar Pradhan on 12 March; the girl's parents handed over Pradhan to the police after nabbing him, but he was released on bail by the order of District Court.³⁹ A woman of Bhagwati was raped by Prithivi Bahadur Shahi on 23 March; though the victim filed petition at the local police post, no action was taken against the perpetrator by the end of the year.⁴⁰ As a result of the lack of formal justice, often the perpetrator is taken under control by the villagers. Local people fell they have

³³ *Ibid.*, at 19-20.

³⁴ *Ibid.*, at 26.

³⁵ *Ibid.*, at 19-20.

³⁶ INSEC, 2008 Human Rights Yearbook, n.4.

³⁷ OHCHR Nepal, n.2, at 26.

³⁸ INSEC, 2008 Human Rights Yearbook, n.4.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

the right to take revenge and justice in their hands to establish some sort of punishment for the perpetrator.

LAW

Lack of infrastructural and legal protection mechanisms have led to further increase in sexual abuse.⁴¹ The legislative framework related to the protection of victims of rape needs considerable strengthening.

The definition of rape under domestic law is very narrow and incomplete. It should be defined comprehensively according to changing situations. Under Nepali law a victim of rape is considered as ex wife by the law. This is a discriminatory provision that need to be amended according to international standards. Similarly, there are only 35 days for presenting complaint of rape. Supreme Court hearings of a petition to amend the statute of limitations for presenting complaints have been repeatedly postponed this year.⁴²

The CPA contains a commitment to protect the rights of the women in a special way by immediately stopping all types of violence against women.⁴³ It is necessary that the legal framework regarding the definition of the crime and the procedural actions for the protection of the victim meet human rights standards. Law providing a better and wider protection of the victim of rape would constitute a first important step for the end of sexual violence against women and for the improvement of women's rights in general.

It must be underscored that sexual abuse constitute a form of discrimination against women and it is prohibited under international treaties to which Nepal is party. In particular, the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) that Nepal ratified in 1991 establish in its article 2 that: "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and

⁴¹ Forum Asia and Women Rehabilitation Center, n 22.

⁴² OHCHR Nepal, n.2.

⁴³ *Ibid.*

without delay a policy of eliminating discrimination against women and, to this end”.⁴⁴ States parties should “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”.⁴⁵ According to this provision Nepal should adjust its domestic law in order to end discrimination against women.

CONCLUSION

Social, cultural, economic and religious factors reiterate male dominance and allow systematic discrimination and violence to pervade women’s lives in Nepal. ⁴⁶ These socio-cultural practices, as well as under education and lack of independency must be considered the main factors those contribute to the violations of the rights of women.⁴⁷ Rape and other sexual abuses against women are the worst manifestation of this discriminatory practice.

Rape is a widespread problem in Nepal with over 200 cases reported in the last year. The age of victims range from 6 to 70 years old and the report shows that relatives of the victims and army officers are often the perpetrators of the crime. The early age of many victims and the fact that perpetrators are people that the victim trusts increase the lack of protection and the culture of silence and impunity. Without protection, women remain silent, thus completing the cycle of violence and impunity.⁴⁸ Unless community attitudes change, women will continue to suffer sexual abuse, even at the hands of their partners and within their homes.⁴⁹ Only changing the stigmatization that women suffer after a rape, more case may be reported and victims may seek redress.

⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, Art. 2.

⁴⁵ *Ibid.*, Art. 2, b.

⁴⁶ ‘We Can end all violence against women’, n.23.

⁴⁷ *Ibid.*

⁴⁸ Forum Asia and Women Rehabilitation Center, n.22.

⁴⁹ ‘We Can end all violence against women’, n.23.

Discriminatory laws, and especially a lack of access to justice to seek redress for sexual abuse continues to impact the lives of women.⁵⁰ The government is still to develop comprehensive legal and administrative measures to support women who have been sexually abused.⁵¹ Changing discriminatory laws according to international standards like the ones put forward in the CEDAW Convention is a priority for the government of Nepal in order to end discrimination against women.

Although sexual violence against women is established as a political problem worldwide, it still fails to be recognized as a political issue in Nepal.⁵² Sexual violence against women primarily centres around patriarchal socio-cultural norms and practices, and hence is suppressed in the private sphere.⁵³ This suppression brings the culture of silence into effect.⁵⁴ The silence that women are forced to exercise makes sexual violence invisible in the public sphere.⁵⁵ All levels of the Nepali society, the family and the community, and the government and political institutions need to change their practices in order to make sexual abuse a visible issue.

⁵⁰ OHCHR Nepal, n.2, at 19.

⁵¹ 'We Can end all violence against women', n.23.

⁵² Forum Asia and Women Rehabilitation Center, n.22.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*