

Nepal: Nepal's Victims of Trafficking Shy Away From Justice [Feature]

By Sanjaya Dhakal (OneWorld South Asia)

More Nepalese women and children are being tricked into sexual exploitation outside their country, but fewer victims are turning up in court to seek justice.

The annual report of the Office of the Attorney General of the Kingdom of Nepal says the number of women victims seeking justice has gone down in the past couple of years - only 54 cases were filed in 2002-03.

In contrast, conservative estimates, published by the Ministry of Women, Children and Social Welfare, state that 5000 to 7000 Nepalese women are sent every year to brothels in India.

A recent report by the International Labor Organization (ILO) stated that 12,000 women and children are trafficked every year from Nepal. And, according to some NGOs, this figure could even be as high as 30,000.

The report says the number of cases filed against traffickers has been declining steadily, from 130 in 1997-98 to 40 in 2001-02.

Says Biswo Raj Khadka, general secretary of Maiti Nepal, an NGO working against girl trafficking: "Every year, around 200 to 300 women return from the brothels - some just flee, some are rescued and some are even kicked out by the brothel-owners once they are infected with incurable diseases like HIV/AIDS. Of them, a very tiny fraction actually files cases."

Even though Nepal has a strict legal system that can punish traffickers with life imprisonment, a combination of factors keeps the victims away from the doors of justice - social stigma, lengthy judicial process, re-victimization and lack of easy access to the law.

Take the example of Tirtha Rai (name changed), a girl in her mid-20s from the district of Sindhupalchowk, east of Kathmandu valley. She had been sold to a brothel in India by her aunt. In 1996, she fled from the brothel in Mumbai and returned to Nepal. Although she filed a case, her aunt went scot-free because of lack of evidence.

Similarly, Bhawana Sharma (name changed), a teen-aged girl from Nuwakot, a district west of Kathmandu, was lured by a promise of marriage and taken to Pune in India, where she was sold to a brothel. Bhawana managed to return home after three years and went to court. The case dragged on but no one was punished, again, for lack of evidence.

"In cases of trafficking, there is hardly any evidence to nail the culprit," says Lalit Basnet, a lawyer. "Most of the time, the relatives themselves hand over the girls to agents, who later take them for selling purpose at Indian brothels. Besides, since our law against

trafficking is very strict, there must be concrete evidence before a court hands over the sentence."

Cases of trafficking fall in the purview of the Human Trafficking (Control) Act of 1987. Even an "attempt to traffic a person" carries a penalty of 10 years in jail.

"The legal process is lengthy (it takes a minimum of 2 years to deliver a verdict) and since the victims have to testify several times, the girls tend to just stop pursuing the cases. Many times the accused persons are their relatives and sometimes even criminals who exert all kind of pressure outside the court leading to the dropping of charges," says Basnet.

Even among the cases filed, few result in favorable verdicts for the women. According to Sapana Pradhan-Malla, president of the Forum for Women, Law and Development (FWLD), "In 40 percent of cases, the police even fail to catch the identified culprit."

She cites another case of a Nepali girl named Tulsa who had filed a case in the Mumbai High Court. "After much deliberation, the court recently stated that it could not punish the accused person because Tulsa could not establish enough evidence to prove the crime."

Pradipna Raj Panta, national program manager with the Joint Initiative Against Trafficking (JIT), a network of UN agencies, ministries and civil society organisation formed in 2000 to coordinate efforts against girl trafficking, says, "Only in the 33 percent of the cases were the guilty punished."

The report of the Attorney General also states that the success rate of such cases at the Supreme Court is less than 33 percent - and in 61 percent of the successful cases, the guilty were sentenced to prison for more than 10 years.

Government officials concede the number of cases filed has been very low.

"Our constitution prohibits the violation of women's rights and we have a number of legal instruments against it, but the problem persists. This shows that only legal provisions do not help," said Shashi Kanta Mainali, secretary at the ministry.

"Social stigma, threats from criminals, delays in our justice system and the costly judicial process, among others, are reasons for the low number of cases. To overcome this situation, the government expects cooperation from the civil society," he says.

"The government is working very hard to overcome this problem of trafficking, which is nothing but a national shame to all of us. The government has also designated 26 districts - out of 75 districts in total - as sensitive areas in terms of trafficking. We are doing our utmost," says Shyam Sundar Sharma, a joint secretary at the Ministry of Women, Children and Social Welfare.

There are an estimated 200,000 Nepalese women and girls working at brothels in Indian cities such as Mumbai, Pune, New Delhi and Kolkata. Human trafficking is said to be the third most lucrative and organized crime, after drugs and illegal weapons.

Asian Human Rights Commission