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Women in Nepal: Human Rights in Theory, Human Rights in Practice

by Barbara Cochrane Alexander*

The Kingdom of Nepal (Nepal) lies land-locked in South Asia, bordered to the north by China and to the south, east, and west by India. On November 9, 1990, after a violent people's movement to restore multi-party democracy, King Birendra promulgated a new constitution. This constitution established a constitutional monarchy and democratic multi-party system in Nepal. Although the principle of equality for women is enshrined in the Nepalese Constitution and, during the past decade, Nepal has ratified nearly all human rights instruments without reservation, Nepalese women continue to suffer legal discrimination and its consequences. Such consequences include high illiteracy rates, poor reproductive health care, and trafficking and forced prostitution.

One important human rights instrument that Nepal ratified, on April 22, 1991, without reservations, is the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention). States that ratify the Women's Convention without reservation undertake an obligation, set forth in Article 18 of the Women's Convention, to submit reports to the Committee on the Elimination of Discrimination Against Women (CEDAW), detailing the progress they have made in implementing women's human rights. CEDAW is comprised of 23 experts on women's human rights. Delegations from each submitting country meet with CEDAW to discuss the reports and answer the committee's questions. Nepal submitted its most recent report on June 15, 1999. Terth Man Shakya, Secretary of Nepal's Ministry of Law and Justice, led Nepal's delegation that met with CEDAW.

Secretary Shakya acknowledged that Nepalese women, who as of November 1999 account for half of the estimated 22.5 million Nepalese people, are still suppressed and exploited. According to Nepal's report, poverty is a major obstacle to implementing international treaty obligations. Shakya emphasized, however, that Nepal is committed to the empowerment of women and gender equality and slowly continues to make progress. For example, Nepal has established a rehabilitation home to assist and promote the self-reliance of women and girls who were involved in trafficking and prostitution. In addition, Nepal has established a national task force to review existing laws that discriminate against women. While CEDAW experts applauded the progress Nepal has made thus far, they cited patriarchal attitudes and norms as the major obstacle to improving women's human rights in Nepal and noted that legislating equality is the first step toward achieving true equality. Three areas in which such legislative review and change are necessary are: education, reproductive health, and trafficking and prostitution.

Education

Currently, Nepal's educational policy is in its Ninth Plan (1997-2002). According to the Research Centre for Educational Innovation and Development, at Tribhuvan University, Kathmandu, one of the goals of the Ninth Plan is to enhance female participation in education. Although female Nepalese children are legally allowed to attend primary and secondary schools, this education is not compulsory and many female children either never attend

school or drop out to help with household chores and younger siblings. According to Article 1 of the Women's Convention, "discrimination against women" means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." The de facto discrimination that Nepalese women face with regard to education—their opportunities for education are more limited than opportunities for males—stems from patriarchal attitudes undermining the equality of men and women.

Equal access to education is widely recognized as an important tool for the empowerment of women. Overwhelmingly, educated women are more productive members of society and have fewer, healthier, and better-educated children than uneducated women. According to Secretary Shakya and Nepal's June 1999 CEDAW report, female literacy in Nepal is estimated at 30 per-

cent. This literacy rate remains far below that of Nepalese men, which is estimated at 66 percent. Furthermore, according to the 1999 Preliminary Report of UN Special Rapporteur on the Right to Education Katarina Tomasevski, submitted to the UN Commission on Human Rights on January 13, 1999, there are 39 percent fewer Nepalese girls enrolled in primary school than Nepalese boys. While nearby coun-

tries, such as Mongolia and China enroll three percent more and only one to two percent fewer girls, respectively, Nepal's 39 percent deficit is the largest of the 128 countries included in the statistical study. For the situation of Nepalese women to improve, they must have basic literacy, writing, and numerical skills. These skills form the foundation for accessing information and understanding legal rights.

The right to education is widely recognized in international law. For example, the right to education is protected by Article 26 of the Universal Declaration of Human Rights (UDHR), Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 10 of the Women's Convention. Because Nepal has ratified both the ICESCR and the Women's Convention, the Nepalese government is obligated under international law to guarantee its female citizens the right to education, not only in its laws, but also in practice. Both the UDHR and the ICESCR guarantee free, compulsory elementary education. Although elementary education in Nepal is free, it is not yet compulsory, even though this was one of the goals of the Ninth Plan. Thus, Nepal is currently in violation of its international obligations. Specifically, under Article 10 of the Women's Convention, Nepal is obligated to ensure that women have equal rights to education at all levels, the same quality of education as men, and access to continuing education such as adult literacy programs. In addition, Article 10 obligates Nepal to take measures to reduce female student drop-out rates.

Reproductive Health

Reproductive health encompasses a number of areas, including access to birth control; a woman's right to determine the

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number and spacing of children; access to prenatal, delivery, and postnatal care; and pregnancy termination. Currently, Nepal's maternal mortality rate—the number of women who die during pregnancy and childbirth per 100,000 live births—is estimated by the Nepal Family Health Survey at 539 deaths per 100,000 live births. The World Health Organization and UNICEF, however, estimate that, due to the difficulty in gathering accurate information, this maternal mortality rate may be three times as high as reported. As a result, Nepal is one of only three countries in the world where female life expectancy is lower than male life expectancy.

The discrimination that women face with regard to reproductive health care is prevalent at every stage, from the decision on when to become pregnant, to whether to carry the pregnancy to term, to giving birth and surviving. Currently, the availability of contraceptives in Nepal is very low; poverty, illiteracy, and the remoteness of rural villages compound this problem. According to Nepal's 1999 CEDAW report, 40 percent of Nepalese women are between the ages of 15 and 19 years when they give birth to their first child. Furthermore, only 44 percent of women in Nepal receive prenatal care and only 10 percent of deliveries are attended by skilled physicians, nurses, or midwives. Postnatal care is virtually non-existent in rural areas.

One of the most critical reproductive health issues in Nepal is abortion, which currently is illegal. From September 7 to 19, 1999, Media Services International of Nepal conducted a poll of 1,050 persons throughout the country and found that 72.5 percent of the people polled opposed legalizing abortion for social, cultural, and religious reasons, while only 19.6 percent of the people expressed the opinion that the right to abortion is overdue. Under Article 16(1)(e) of the Women's Convention, Nepalese women are entitled to the right to decide responsibly when and how many children to have, as well as the right to "access to the information, education and means to enable them to exercise these rights." As a party to the Women's Convention, Nepal is obligated to take all appropriate measures to ensure that women are able to exercise this right guaranteed to them under Article 16(1)(e). According to Sapana Malla, an attorney with the Forum for Women, Law and Development, because most women are illiterate, they usually do not know the laws on reproductive rights. Furthermore, CEDAW, in its review of Nepal's June 1999 report, expressed concern that the criminalization of abortion in Nepal results in unsafe and numerous births that endanger Nepalese women's lives.

In an effort to comply with its obligations under Article 16 of the Women's Convention, the Nepalese government recently developed a National Reproductive Health Strategy, National Maternity Care Guidelines, and a National Safe Motherhood Action Plan to educate women regarding their reproductive rights. These programs include educating women about and providing them access to contraceptives; upgrading and equipping district hospitals in Nepal to cope with obstetric emergen-

cies; training physicians, nurses, and midwives; and establishing special government units to oversee the prevention and management of complications arising from illegal abortions. Unfortunately, these programs are not yet effective in practice. According to Secretary Shakya, government instability and budget constraints have hindered the effective implementation of these programs. Such programs, however, which represent only the initial steps to improving the reproductive health rights of Nepalese women, will not fulfill Nepal's obligations under the Women's Convention unless Nepal reforms its restrictive abortion law.

In Nepal, infanticide—pregnancy termination after six months—and abortion are considered homicide and are punishable by up to 20 years in prison. This punishment applies even if the pregnancy resulted from rape or incest. As previously mentioned, under Article 2 of the Women's Convention, Nepal is obligated "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women . . ." This includes, under Article 12 of the Women's Convention, eliminating discrimination against women in the health field. Men and women must have equal access to health care services according to Article 12(1), and this includes those services related to family planning. Furthermore, Article 12(2) obligates Nepal to ensure that

women receive all appropriate healthcare services during pregnancy and the postnatal period. Article 12(2) also requires that these services be provided free where necessary. In addition, CEDAW, at its 20th session in 1999, adopted *General Recommendation No. 24* on women and health. Its purpose is to further explain Article 12 of the Women's Convention. Paragraph 17 of the *Recommendation* explains that "all appropriate means" includes "appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to

ensure that women realize their rights to health care."

In its June 1999 meeting with the delegation from Nepal, CEDAW expressed its grave concern with Nepal's abortion law and noted that Nepal is in violation of Article 12 of the Women's Convention, which implies that refusing to provide reproductive health services to women discriminates against women on the basis of sex. In addressing the abortion issue, one CEDAW expert explained that a state party to the Women's Convention discriminates against women when it refuses to provide reproductive services exclusive to women.

In addition, discriminating against women in the area of reproductive services and health violates more than just women's reproductive health rights. By failing to repeal Nepal's restrictive abortion law and effectively implement reproductive and maternal health care programs, the Nepalese government also undermines a woman's right to a standard of living that ensures the health of the individual, including medical care and necessary social services (UDHR Article 25), the right to enjoy "the highest attainable standard of physical and mental health" (ICESCR Article 12), and the right to life (UDHR Article 3). For example, as a result of not being able to obtain a legal abortion, rural Nepalese women are forced to resort to unsafe measures to



Members of the women's savings and credit group, Women's Development Organization, from the rural community of Kotthok, in the middle-hill district of Kavre, Nepal.

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terminate pregnancies, such as inserting a cow-dung smeared stick into the vagina or ingesting chemical dyes. Hundreds of Nepalese women, an average of six per day, die each year as a result of botched illegal abortions.

Nepal has proposed an amended abortion bill that would require women to obtain the permission of their husbands or parents before receiving an abortion, but as of March 2000, the bill has not passed. According to CEDAW, although this proposed law represents a step in the right direction, it is still insufficient because it does not ensure that women will have equal rights with men in the area of reproductive health, as guaranteed by Article 12 of the Women's Convention. Until Nepal nullifies its

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discriminatory laws and improves its health care infrastructure in practice, it will continue to violate its international human rights obligations as defined by the Women's Convention.

Trafficking and Prostitution

An additional area of concern regarding the human rights of Nepalese women is the prevalence of trafficking—the sale of women into prostitution—and prostitution. As the Office of the UN High Commissioner for Human Rights explains, trafficking and prostitution are contemporary forms of slavery. According to Nepal's CEDAW June 1999 report, approximately 200,000 Nepalese women live in Indian brothels. Some of these women are trafficked into India, while others are forced, by their circumstances, into prostitution. According to Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, in Nepal, there is a practice called *deukis* whereby poor, rural Nepalese families sell their daughters to rich, childless families, who then offer these girls to local temples where they are forced into prostitution. Although Nepal's law, *Muluko Ain*, states that prostitution and trafficking are crimes, the legal system does not enforce the law and traffickers are seldom prosecuted.

Confronted by the failure of the Nepalese government to address adequately the prostitution and trafficking problem, non-governmental organizations (NGOs), such as *Maiti Nepal*, which was founded in 1993 to promote women's rights in Nepal, have taken the lead in addressing the problem. Currently, *Maiti Nepal* is spearheading a nationwide anti-sex trafficking program in Nepal, which is designed to provide women in high-risk trafficking areas with marketable skills and assist female sex slaves who return from India. Furthermore, women who are trafficked to India or become prostitutes in Nepal do not have access to condoms or information on sexually-transmitted diseases. Therefore, as the prostitution and trafficking industries have continued to increase in Nepal over the past 20 years, the spread of sexually-transmitted diseases, including HIV and AIDS, has become a serious problem. According to *Maiti Nepal*, studies conducted in Mumbai, Nepal, indicate that as many as 65 percent of prostituted and trafficked women are HIV positive. In addition, these stud-

ies also indicate that 50 percent of these women also suffer from two or more other sexually-transmitted diseases, such as syphilis and gonorrhea. The Nepalese government verbally expressed its commitment to working with the South Asian Association for Regional Cooperation on a draft *Regional Convention Preventing and Combating Trafficking in Women and Children for Prostitution* as a proposed step forward to solving the prostitution and trafficking problem throughout South Asia. This draft, however, has been criticized by, among others, Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, as inadequate.

Prostitution and trafficking are forms of temporary slavery that infringe on women's freedom of movement and adversely affect women's standards of living. The UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which entered into force July 25, 1951, declares in its preamble that prostitution and trafficking are incompatible with human dignity. This convention, however, has made little contribution to solving the problem.

Additionally, the UDHR and the International Covenant on Civil and Political Rights (ICCPR) recognize the right not to be enslaved (Article 4 and Article 8, respectively), to freedom of movement (Article 13 and Article 12, respectively), and to an adequate standard of living (Article 25 of the UDHR). The ICESCR recognizes the right to an adequate standard of living (Article 11), and to physical and mental health (Article 12). Moreover, under Article 6 of the Women's Convention, Nepal is obligated to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Although the Nepalese government recognizes the need to protect its female citizens from prostitution and trafficking, and agrees with CEDAW that these are urgent problems requiring immediate attention, verbal agreement does not solve the problem; actual positive steps must be taken. Until that time, Nepal is in violation of its international human rights obligations.

Conclusion

Although Nepal still has great strides to make to ensure the equality of women and raise their standard of living, the government should be applauded for its verbal commitment to the empowerment of women and women's human rights. The

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discrimination Nepalese women suffer is not endemic only to Nepal. Women throughout South Asia suffer from gender oppression. Nepal is the only country in South Asia to ratify CEDAW without any reservations, and the government continues to work on developing a framework for promoting women's human rights. Nepal's government has expressed its strong support for women's human rights, but it must now implement this commitment in practice. Nepal's first challenge of the twenty-first century will be to modify successfully the existing patriarchal attitudes that impede the goal of gender equality for women. ☺

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