

Nepal: Freedom of religion or belief

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Introduction

CSW remains deeply concerned about the state of freedom of religion or belief (FoRB) in Nepal, in light of provisions within the 2015 constitution and the 2017 Criminal Code Bill which contravene the right to FoRB. Nepal has already seen threats to FoRB. One example is the 2016 Charikot case, when eight Nepali Christians were charged with attempting to convert children, after sharing a comic book on the story of Jesus at the end of an earthquake trauma relief camp. Although they were acquitted of all charges in December 2016, CSW remains concerned that similar cases could occur in the future, particularly if the constitution and Criminal Code Bill are implemented to their full effect.

Constitution

The constitution, promulgated in 2015, has been criticised by human rights groups for its failure to protect the rights of marginalised communities including women, Dalits and religious minorities. FoRB is of particular importance in light of the country's transition from a Hindu monarchy to a secular democratic republic, which was completed with the promulgation of the new constitution in 2015. While the constitution establishes Nepal as a secular state, it also stipulates that 'Sanatana Dharma' (the Hindu faith) will be protected by the state.

Article 26(3) of the constitution restricts the right to FoRB. It states: 'No person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardize other's religion and such act shall be punishable by law.'

Under this clause, talking about one's faith to a person of another faith could be construed as an act that may 'jeopardize other's religion', and as an attempt to 'convert another person from one religion to another', something which is to be punishable by law. This endangers two fundamental rights of every individual which are guaranteed in international law; firstly, the right to freedom of expression, and secondly the right to follow a religion of his or her own choice and to manifest that religion in word and action. At Nepal's United Nations Universal Periodic Review (UPR) in November 2015, both Spain and the US made recommendations to amend Article 26 to allow for full religious freedom to be upheld. However, Nepal did not accept these recommendations.

Penal code

The 2017 penal code was signed into law on 16 October 2017 by President Bidhya Devi Bhandari, and came into force on 17 August 2018. This new law severely restricts freedom of expression and freedom of religion or belief.

Section 158, which criminalises 'conversion' could be invoked against a wide range of legitimate expressions of religion or belief, including the charitable activities of religious groups, or merely speaking about one's faith. Similar anti-conversion laws in force in neighbouring India have been misused to foster social intolerance and violence towards peaceful religious activities, and to falsely accuse religious minorities – especially Muslims and Christians – of forcefully converting others.

The wording of Section 156 which criminalises the 'outraging' of religious sentiments, is worryingly similar to Pakistan's so-called blasphemy laws. These laws are poorly defined and widely misused to settle personal scores, to target religious minorities, or to further extremist agendas. Decades of misuse of the blasphemy laws in Pakistan have resulted in a situation where even voicing disagreement with these laws can lead to violence.

According to the Religious Liberty Forum Nepal, targeted attacks against the Christian community since the promulgation of the 2015 constitution have risen: accusations of forced conversions, bomb blasts and arson of church buildings have been reported. In May 2018 an orphanage called New Vision Children's Home was closed down by the government for failure to register the home. The owners were arrested.

Burial rights for religious minorities

In Hinduism and Buddhism the bodies of the dead are traditionally cremated. However, Nepal allocates no land to the Christian, Muslim and Kirat communities for burial. In addition, Hindu landowners are often unwilling to sell land if it is to be used for burial. In some rural areas Christians seeking to bury their dead have found themselves victims of violent reactions from local Hindus, who have seized and forcibly cremated the body.

In other cases mourners from the Christian, Muslim and Kirat communities have had to travel considerable distances to bury their dead, and even dig up and rebury bodies. Besides discriminating against religious minorities, this represents a considerable public health issue and consequently threatens the realisation of UN Sustainable Development Goal 6, to ensure the availability and sustainable management of water and sanitation for all.

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Registration

There is no provision in domestic law for Christians, Muslims, Jains, Buddhists, Baha'is and other religious minority groups to register their places of worship as religious organisations. They are obliged to register the buildings as non-governmental organisations (NGOs) under the NGO Act 2034 or as individually-owned properties, which restricts their activities in those buildings. NGOs need the approval of local District Development Committees (DDCs) to carry out their activities. In a stay order sent on 21 June 2016, the Department of Federal Affairs and Local Development instructed all DDCs to deny permission to any NGOs that apply for activities that involve dharmapracharak, or sharing of one's faith. An unofficial translation of point four in this letter reads: 'When making a memorandum of understanding and project agreement [with NGOs], do not approve any projects that involve the sharing of one's faith.'

Nepal's proposed National Integrity and Ethics Policy (2074), aimed at regulating and controlling the work of NGOs and INGOs, has been criticised by civil society groups as restricting the activities of religious minority groups, which are required to register as NGOs. United Nations Special Procedures Mandate Holders, David Kaye, Clement Nyaletsossi Voule, Michel Forst and Ahmed Shaheed have raised their concerns with the government of Nepal about the serious negative effects on the activities of organisations and of civil society, as the policy will severely impinge on the exercise of fundamental rights.

Recommendations

- Urge the government of Nepal to repeal or amend Sections 155-159 of the penal code to ensure that only unethical proselytising is criminalised, and other vague terms are removed.
- Call on the government of Nepal to amend Article 26(1) of the constitution to be in line with Nepal's obligation under Article 18 of the International Covenant on Civil and Political Rights.
- Encourage the government of Nepal to amend Article 26(3) of the constitution to remove any reference to the restriction of conversion.
- Urge the government of Nepal to remove the explanation for 'secularism' from Article 4 of the constitution, which only advocates for the protection and freedom of 'Sanatan Dharma,' and is understood to refer to the Hindu religion.
- In December 2017 Nepal held its first ever provincial-level elections as part of its federal restructure. The new provincial-level government officials will be able to influence the wording of new provincial laws. As bilateral donors and multilateral donors (such as the World Bank) will be supporting this transition, they must ensure that human rights, particularly FoRB, are a vital element of all projects and training they support.
- Nepal's constitution and penal code are symptomatic of concerning attitudes held by certain groups about FoRB and towards religious minorities in the country. The international community must invest in initiatives that address religious hatred and discrimination in Nepal, and support voices of peace and moderation.
- Urge the government of Nepal to allocate land to the Christian, Muslim and Kirat communities for burial.