



Kathmandu Valley. Photo: Giulio Paletta/CSW 2016

NEPAL

BILL RESTRICTING FREEDOM OF RELIGION OR BELIEF

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BACKGROUND

The right to freedom of religion or belief is of particular importance in Nepal in light of the country's recent transition from a Hindu monarchy to a secular democratic republic.

While the new constitution, promulgated on 20 September 2015, established Nepal as a secular state, it does not fully protect freedom of religion or belief.¹

Article 26(3) of the constitution 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.²

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 enjoy full 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.

If not amended, these legal restrictions on conversion may have serious consequences.

At the United Nations Universal Periodic Review (UPR) of Nepal in November 2015, both Spain and the USA made recommendations to Nepal to amend Article 26 of the constitution, to allow for full religious freedom to be upheld in the constitution. However, Nepal did not accept these recommendations.

Furthermore, law enforcement authorities have already used Article 26 on a charge sheet in the so-called Charikot incident. Eight Christians were arrested in Charikot in eastern Nepal in June 2016 and kept in police custody for nine days. They face charges of attempting to convert children to Christianity through the distribution of a comic book, which explains the story of Jesus.

LEGISLATION AMENDMENTS

The Nepali parliament is currently reviewing bills that embody a series of amendments to replace the *Muluki Ain* (the old civil and criminal code, which is still in use), to fully reflect the provisions of the new constitution.

These include a bill entitled 'Bill designed to amend and integrate prevalent laws relating to Criminal Offense'. This bill was registered in parliament on 15 October 2014 by Narahari Acharya, former Minister of Law, Justice, Constituent Assembly and Parliamentary Affairs of Nepal. Citizens were invited to submit their comments by 14 April 2016.³

³ My Republica, 'House solicits public feedback on Muluki Ain replacement bill', 1 December 2015 <http://admin.myrepublica.com/politics/story/31964/house-solicits-public-feedback-on-muluki-ain-replacement-bill.html>

¹ ConstitutionNet, The Constitution of Nepal, Part 1, Clause 4 www.constitutionnet.org/files/nepal_constitution_-_official_translaiton_eng_mljpa.pdf p.8

² ibid., Part 3, Clause 26(3) p.21



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Clauses 154-156 in Section 9, entitled 'Offense related to Religion'⁴ contravene Articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a signatory.

Clause 154 states:

*(1) Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/ talk or by a shape or symbol or in any other such manner.
(2) Anyone committing the offense as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.*

The wording of this clause is similar to the blasphemy laws in Pakistan (Section 295, PPC), which make it a criminal offence to insult another's religion. 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 Pakistan's blasphemy laws have resulted in a situation where even voicing disagreement with these laws can lead to violence.

Clause 156 bans religious conversion by stating:

*(1) Nobody should convert the religion of other person or indulge in such act or encourage such an act.
(2) Nobody should indulge in any act or conduct so as to undermine the religion, faith or belief that any caste, ethnic group or community has been observing since 'sanatan' (eternal) times or to jeopardize it with or without any incitement to convert to any other religion, or preach such religion or faith with any such intention.
(3) Anyone committing the offense as per sub-clause (1) and (2) shall face up to five years of imprisonment and fine of up to fifty thousand rupees.
(4) If a foreigner is found to have committed the crime as per sub-clause (1) and (2), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per this clause.*

These provisions restricting religious conversion could be invoked against a wide range of expressions of religious faith, including the charitable activities of religious groups or peacefully talking about one's faith, all of which may be portrayed as attempts to convert others.

Similar anti-conversion laws in force in five Indian states have been misused to foster social intolerance and violence towards peaceful religious activities, and falsely accuse religious minorities (especially Muslims and Christians) of forcibly converting others. If similar laws were passed in Nepal this would have a damaging normative effect, fuelling social prejudice against the

activities of religious minority groups. This would be highly detrimental to Nepal's transition towards secular democracy.

RECOMMENDATIONS

To the government of Nepal

- Ensure that the penal code guarantees all citizens the right to express and share their beliefs, the right to choose and change their religion or belief, as well as the right not to believe in any religion.

To states, parties or international bodies maintaining diplomatic relations with Nepal

- Monitor the progress of the 'Bill designed to amend and integrate prevalent laws relating to Criminal Offense'
- Encourage Nepal to amend Section 26(3) of its constitution to conform with international treaties, and to ensure that it – along with the draft penal code – reflects in full the requirements of the ICCPR and of Nepal's own Treaty Act 1991.

⁴ See Appendix for unofficial translation of Section 9 of the bill

APPENDIX

Unofficial English translation of the title, preamble and Section 9 of the 'Bill designed to amend and integrate prevalent laws relating to Criminal Offense'.

TITLE

Bill designed to amend and integrate prevalent laws relating to Criminal Offense

PREAMBLE

Whereas it is expedient to provide for a timely criminal code to prevent and check criminal offence by integrating the prevalent laws relating to it so as to maintain morality, courtesy, good conduct, privileges and economic interest of the people by maintaining law and order in the country, This Act has been drafted by the Constituent Assembly, in capacity as the Legislature-Parliament, as per Article 83 of the Interim Constitution of Nepal, 2007.

CRIMINAL PROCEDURES CODE

SECTION 9

Offense related to Religion

153. Not to cause damage to a religious site or a place regarded as sacred: (1) Nobody should, with an intent to hate or insult the religious faith or religion of any caste, ethnicity, community or class or despite knowing that it would do so, cause any loss or damage or pollute, spoil, litter or carry out any such act to a place where religious worshipping, prayer or act is carried out or to any location, goods, graveyard or burial that is regarded as sacred. (2) Anyone committing the offense as per sub-clause (1) shall face up to three years of imprisonment and a fine of up to thirty thousand rupees. (3) If a foreigner is found to have committed the crime as per sub-clause (1), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per sub-clause (2).

154. Not to hurt religious sentiments: (1) Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/talk or by a shape or symbol or in any other such manner. (2) Anyone committing the offense as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.

155. Not to cause obstruction to religious custom-traditions: (1) Nobody should knowingly create obstructions to the religious customs-traditions that is being observed or is practiced since *sanatan* (eternal) times by others.

156. Not to convert a religion: (1) Nobody should convert the religion of other person or indulge in such act or encourage such an act.

(2) Nobody should indulge in any act or conduct so as to undermine the religion, faith or belief that any caste, ethnic group or community has been observing since *sanatan* (eternal) times or to jeopardize it with or without any incitement to convert to any other religion, or preach such religion or faith with any such intention.

(3) Anyone committing the offense as per sub-clause (1) and (2) shall face up to five years of imprisonment and fine of up to fifty thousand rupees.

(4) If a foreigner is found to have committed the crime as per sub-clause (1) and (2), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per this clause.

157. Limitation: In offense under Clause 156, complaint shall not be applicable after completion of six months of knowledge of such offense to have been committed and after completion of three months of committing of other offense under this section.