

Legal framework

Freedom of religion or belief (FoRB) is of particular importance in light of Nepal's transition from a Hindu monarchy to a secular democratic republic, which was completed with the new constitution promulgated in 2015.

While Article 26 of the Nepali Constitution states that "each person shall be free to profess, practice and preserve his religion according to his faith," Article 26(3) states that to "convert another person from one religion to another or any act or conduct that may jeopardise other's religion is punishable by law." These clauses endanger both FoRB and freedom of expression.

Although the constitution recognises Nepal as a secular state, the current definition of secularism is restrictive, inconsistent with the international human rights framework, prejudiced against minority religions, and legitimises discrimination on the basis of religion. Article 4 of the constitution explains 'secular' as "religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial." A past Supreme Court judgement has interpreted this to mean protection of Hinduism.

Nepal's penal code contains provisions that severely restrict FoRB:

- Section 155 concerns "damaging or injuring or, in any way, defiling, destroying or polluting any place of religious worship with the intent of insulting the religion or religious feeling." Local sources report that in incidents where unidentified perpetrators damage shrines in Hindu temples, Christians are blamed, leading to negative feelings towards Christians.
- Section 156 criminalises the "outraging" of religious sentiments. This is poorly defined and widely misused to settle personal scores, target religious minorities or to further extremist agendas.
- Section 157 states that "no one should create obstacles knowingly in the religious tradition of other faith being practiced since ancient times," which can be interpreted as referring to Hinduism, considered by many to be the oldest religion.
- Section 158 criminalises "conversion." This 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.

According to local sources, since the promulgation of the penal code, an estimated 25 incidents involving targeted attacks against Christians have been reported. Violations include property damage and harassment, intimidation and physical assault during prayer meetings by non-state actors, and false accusations of conversion resulting in legal prosecutions. Several legal prosecutions against Christians for attempting to convert others are ongoing in the Supreme Court and trial courts. However, delays concluding these cases have drawn criticisms by local Christian groups, who say that it puts undue financial burden on the defendant.

Anti-proselytization laws are in violation of the right to FoRB. For example, in November 2021 Pastor Keshav Raj Acharya of Abundant Harvest Church was sentenced to two years in prison and fined 20,000 Nepali rupees after being found guilty of proselytization. Local monitoring groups have accused the police of discriminatory practices in handling his case.

Burial rights

There is no burial land specifically allocated to Christian, Muslim and Kirat communities in Kathmandu. In some rural areas Christians seeking to bury their dead have been forced to travel large distances in order to do so, in other cases Christians have even been forced to dig up and rebury bodies or faced violence from local Hindus, who have seized and forcibly cremated bodies. This is both a FoRB violation and a public health issue that could negatively impact water and sanitation.

Tibetan refugees

According to the organisation [Free Tibet](#), there are an estimated 20,000 undocumented Tibetan refugees in Nepal. With no identity cards, many Tibetans are unable to apply for jobs, open bank accounts, acquire a drivers licence or access professional studies.

Tibetans in Nepal were prevented from marking Tibetan Uprising Day, and from holding religious celebrations of the Dalai Lama's birthday in 2020. There has been increased monitoring and investigation by police of Tibetan Buddhist religious celebrations. Nepali Buddhist monks have often been mistaken for Tibetans, and face harassment and discrimination on account of their saffron robes.

Registration of places of worship

Christians, Muslims, Jains, Buddhists, Baha'is and other religious minority groups cannot register their places of worship as religious organisations. They are obliged to register the buildings either as non-governmental organisations (NGOs) under the NGO Act 2034, or as individually-owned properties, which restricts activities in those buildings.

On the recommendation of municipality offices, the Chief District Officer (CDO), which reports to the Home Ministry is empowered to grant NGO registrations and renewal of licences. However, local sources report the Social Welfare Council and CDO offices continue to discriminate in their determination of applications from Christian groups.

Nepal's proposed National Integrity and Ethics Policy 2074, aimed at regulating and controlling the work of national and international NGOs, has been criticised by civil society groups for restricting the activities of religious minorities. Four United Nations Special Procedures Mandate Holders have raised their concerns with the government of Nepal about the negative effects of the policy on the activities of civil society organisations.

Recommendations

To the government of Nepal:

- Repeal or substantially amend Article 26(1) of the constitution and Sections 155, 156, 157 and 158 of the Penal Code, 2017, so that they are consistent with international standards on FoRB.
- Reform Article 26 of the constitution to include a definition of secularism which conforms with the international human rights framework.
- Ensure that religious minorities have the right to own, maintain, protect, and access sacred sites and burial grounds, and that suitable public land will be officially designated for burial.
- Ensure that Tibetans in Nepal have their right to FoRB upheld and are free to enjoy social, legal, and mobility rights.
- Ensure that religious minorities are protected from false criminal charges for “converting” others, and not subjected to protracted criminal proceedings.

To the United Nations and Member States:

- Urge Nepal to guarantee the right freedom of religion or belief for all, in law and in practice, in line with Article 18 of the International Covenant on Civil and Political Rights (ICCPR) to which the State is party, by repealing or amending Article 26(1) of the Constitution and Sections 155, 156, 157 and 158 of the Penal Code.
- Urge Nepal to establish an independent complaints mechanism to investigate and prosecute FoRB violations, including arbitrary and unlawful acts by law enforcement officials.
- Urge all relevant UN mechanisms, including the Special Procedures and Treaty Bodies, to include the right to freedom of religion or belief in their monitoring and reporting on Nepal, addressing the vulnerabilities and violations faced by religion or belief communities and those seeking to defend them.
- Ensure that the situation for freedom of religion or belief in Nepal is consistently raised in public and in private, including during high-level visits and other bilateral exchanges.

To the government of the United Kingdom:

- Raise concerns about violations of freedom of religion or belief during bilateral meetings with the government of Nepal.
- Urge the government of Nepal to fully implement its international commitment to freedom of religion or belief.

**CSW everyone
free to believe**

T +44 (0)20 8329 0010
✉ @CSW_UK
f /CSWUK
csw.org.uk

PO Box 99
New Malden
Surrey, KT3 3YF
United Kingdom

© Copyright CSW 2022. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, transmitted, in any form or by any means, electronic, photocopying, mechanical, recording and/or otherwise without the prior written permission of CSW.