

Introduction

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. However, CSW remains deeply concerned about the state of FoRB in the country.

Constitution

The constitution criminalises the freedom to manifest a person's religion or belief. While Article 26 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." This endangers two fundamental rights of every individual which are guaranteed in international law: the right to freedom of expression, and the right to follow a religion of his or her own choice and to manifest that religion in word and action.

Although the constitution recognises Nepal as a secular state, Article 26 defines 'secular' as the "protection of religion and culture being practised since ancient times and religious and cultural freedom."

'Secularism' in the constitution means the safeguarding of 'dharma sanskriti' (religion and culture) that has been in existence for generations (sanaatan), as well as the freedom of religion and culture on the sovereign soil of Nepal. In practice this has been understood as the protection of the Hindu religion, which is the only religion that has been practiced since ancient times. The current definition of 'secularism' is restrictive and inconsistent with international human rights framework and prejudices other minority religions, which will legitimise discrimination on the basis of religion.

Repressive provisions in the penal code

Nepal's penal code came into force on 17 August 2018. This law severely restricts FoRB.

- Section 155 states "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."
- Section 156 criminalises the 'outraging' of religious sentiments. It is similar to Pakistan's so-called blasphemy laws which are poorly defined and widely

misused to settle personal scores, to target religious minorities, or to further extremist agendas.

- Section 157 states "no one should create obstacles knowingly in the religious tradition of other faith being practiced since ancient times."
- 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 twenty five cases involving violations against Christians have been reported. Violations range from property damage and targeted attacks on prayer meetings by non-state actors, to false accusations of conversion resulting in legal prosecutions.

On 23 April 2019 local police arrested four Christians at their hotel in Ghorahi, a city in the Dang Deukhuri District, for their alleged involvement in proselytism following a Christian conference for church leaders on 22 April. The four have been identified as Dilliram Paudel, the General Secretary of the Nepal Christian Society; Gaurav Sreevastab, an Indian national; an unnamed U.S. citizen and Kusang Tamang. They were charged for attempted conversion, however, the court found no case against them and dropped all charges on 27 February 2020.

In June 2019 a mob called Shiva Sena (Army of Shiva) assaulted staff at the Anandaban Leprosy Hospital in Kathmandu on suspicions that hospital staff were engaging in conversion. The hospital has been a pioneer in serving people with leprosy in the area and is staffed by Christian and non-Christians.

Nepal allocates no land to the Christian, Muslim and Kirat communities for burial. 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 been targeted with violence by local Hindus who have seized and forcibly cremated bodies. This is not only a violation of FoRB, but also represents a considerable public health issue and threatens the realisation of the sixth UN Sustainable Development Goal, which grants the assurance, availability and sustainable management of water and sanitation for all.

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Tibetan refugees

According to the Tibetan Refugee Welfare Office in Nepal, there were an estimated 13,000 undocumented Tibetan refugees remaining in Nepal as of 2019. With no identity cards, many young people do not have access to opportunities to apply for jobs, open bank accounts, acquire drivers licence and access professional studies.

The religious celebration of the 84th birthday of the Dalai Lama on the 6 July 2019 was banned for Tibetans living in Nepal. The government issued an order to cancel the celebration with no opportunity for dialogue. There has been increased monitoring and investigation by police of Tibetan Buddhist religious celebrations. The Tibetan Refugee Welfare Office informed CSW that the portrait of the Dalai Lama was removed from a religious celebration on the 3rd day of the Tibetan New Year in 2018, leaving Tibetans embarrassed. Nepali Buddhist monks have often been mistaken as Tibetans and face harassment and discrimination on account of their saffron robe.

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. NGOs need the approval of local District Development Committees (DDCs) to carry out their activities. In a stay order issued 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 sharing of one's faith.

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. United Nations Special Procedures Mandate Holders David Kaye, Clément Nyaletsossi Voule, Michel

Forst and Ahmed Shaheed have raised their concerns with the government of Nepal about the serious negative effects of the policy on the activities of organisations and civil society.

Recommendations

To the government of Nepal:

- Take appropriate measures to 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 freedom of religion or belief
- Take immediate measures to reformulate Article 26 of the constitution to remove the prejudicial character in the definition of secularism, and instead include a definition of secularism which is in conformity with international human rights framework and refrains from preferential treatment of one religion over others.
- Prosecute perpetrators of crimes who target religious minorities and ensure that police officers who fail to carry out their duties are liable for failure to investigate.
- Take measures to ensure that wrongful prosecutions are not encouraged and urge the judiciary to expedite hearings which have financial and reputational impacts on religious minorities who are the victims of state and non-state actors.
- Ensure that religious minorities have the right to own, maintain, protect and have access to sacred sites and burial grounds, and that suitable unused public land will be officially designated for burial, so that minority religions' right to manifest their faith in their traditional ceremony of burial is officially upheld.
- Take lasting measures to ensure that Tibetans in the country are afforded the freedom to profess, practice and preserve their religion without fear or intimidation, harassment and attack, and to guarantee that Tibetans enjoy social, legal and mobility rights without fear of persecution.