

NEPAL

Nepal is an ancient country to whom references can be found in Vedic sources. Historically, it was a Hindu monarchy, similar in model to the Indian Hindu Kingdoms.¹ In 2006, Nepalese King Gyanendra agreed to relinquish power and institute democracy following a protracted and well-motivated campaign. The country was officially changed into a secular republic in early 2008 following the passage of a constitutional amendment by the parliament. Since that time, the government has been dominated by coalitions led by different factions of the Communist Party of Nepal.²

Despite historically being a Hindu kingdom, Nepal is home to a number of sizable religious minorities. Of the 31.6 million inhabitants of Nepal,³ 81.3% ascribe to Hinduism, 9.04% to Buddhism, 4.39% to Islam, 3.05% to Kirat, and 1.42% to Christianity. Smaller religious communities include those from Prakriti, Bon, Jainism, Baha'i, Sikhism, and a large population identified as "undefined." All of these religions are found in a population that is even more ethnically pluralistic. According to official statistics, there are 130 recognised ethnic groups, the largest of which, the Chhetree, accounts for only 16.6% of the total.⁴

These faiths are nominally protected in the new constitution that followed the democratisation of the country in 2008. There was also great hope of a religiously free country when it was announced that the new republic would be officially registered as secular. However, similar to the Indian laws passed to protect religion, the Nepalese constitution also includes the right to be free from conversion.⁵ This means that religions that include elements of proselytization are constitutionally illegal. Further, suspected cases of conversion can also become sources of detention for religious practitioners, whether warranted or not.

Christians in Prison

Pastor Shakti Pakhrin and seven others

Pastor Shakti Pakhrin was arrested on 13th June 2016, joining Banita Dangol, Bhim Bahadur Tamang, Balkrishna Rai, Kiran Dahal, Prakash Pradhan, Bimal Shahi, and Philip Tamang who had been arrested four days earlier. The charges brought against them were of forced conversions. These were as a result of these local church members distributing biblical pamphlets at two schools in Dolakha district. Though this does not represent a conversion in and of itself, these activities were seen as efforts to influence people to change religion and

¹ CountryWatch Incorporated. "Nepal Country Review: 2011".

² BBC. "Nepal profile- Timeline".

³ The Carter Center. "Nepal: Waging Peace".

⁴ National Planning Commission Secretariat Central Bureau of Statistics. "STATISTICAL YEAR BOOK OF NEPAL – 2013".

⁵ USCIRF. "Nepal 2014 International Religious Freedom Report".

thus allegedly violated Article 26(3) of the constitution. Local authorities found this to be of particular concern due to the fact that the recipients of these pamphlets were children.⁶

All were released on 17th June 2016 after promising to cease their outreach programmes.⁷ This represents a tenuous balance between religious freedom and the perceived threat among the majority Hindu population of the rapidly rising number of Christians in the country.⁸

The full list of documented cases of FoRB prisoners for each denomination is available on the USB key attached to this report and on our website: <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/>.

Laws Used to Criminalize Religious Activities

Constitution of the Federal Democratic Republic of Nepal, 2015:⁹

Article 26

Right to religious freedom

(3) While exercising the right as provided for by this Article, no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.

The problem with Article 26 is that it is in the constitution rather than in the criminal code. The wording is ambiguous and therefore useful only as a general principle. What actually constitutes an act contrary to public health or that disturbs the religion of other people is left up to interpretation rather than being clearly codified. It is due to interpretation that pastor Pakhrin and the other Christians distributing pamphlets in the schools were arrested, even though they did not directly convert anyone, forcibly or otherwise.

The Nepalese government has also been drafting and debating a religious freedom law, modeled after those in Indian states such as Orissa and Madhya Pradesh, which would place more specific and punitive controls on conversions from one's perceived religion at birth.¹⁰ In both India and Nepal, this usually means conversions from Hinduism. This therefore restricts an individual's right to choose and certain religions' rights to propagate their religion.

⁶ Suzette Gutierrez Cachila. "Nepal arrests seven Christians over allegations of converting people to Christianity".

⁷ Barnabas Fund. "Eight Christians in Nepal released from prison but conversion charges remain".

⁸ Danielle Preiss. "Why Nepal Has One of The World's Fastest-Growing Christian Populations".

⁹ Nepal Constituent Assembly. "Constitution of the Federal Democratic Republic of Nepal: September 20, 2015 (2072)".

¹⁰ Prakash Khadka. "Anti-conversion law will send Nepal backward".

National Standards for Detention Conditions

Constitution of the Federal Democratic Republic of Nepal, 2015:¹¹

Article 22

Right against torture

(1) No person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

(2) Any such act pursuant to clause (1) shall be punishable by law and a victim of such an act shall have the right to compensation as provided for by law.

Compensation Relating to Torture Act, 2053 (1996):¹²

Article 3

Prohibition on Torture

(1) No person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture.

Article 7

Action against the Person Involved in the Commission of Torture: If it is held that torture has been inflicted as mentioned in this Act, the District Court may order the concerned body to take departmental action against the governmental employee who has inflicted such torture, in accordance with the prevailing law.

In addition to these stipulations on the prohibition of torture or violent mistreatment in the penal process, Nepal's Prisons Act (1963) ensures that basic needs are met, including food, clothing, and sanitation. There is a particular focus on the protection and provision for groups deemed to be at a greater threat of vulnerability, such as women and young offenders.¹³

International Reports on Prison Conditions in Nepal

Nepal 2014 Human Rights Report, US State Department Human Rights Commission:¹⁴

¹¹ Nepal Constituent Assembly. "Constitution of the Federal Democratic Republic of Nepal: September 20, 2015 (2072)".

¹² Nepal Constituent Assembly. "Compensation Relating to Torture Act, 2053 (1996)".

¹³ Nepal Constituent Assembly. "Prisons Act, 2019 (1963)".

¹⁴ US State Department. "Nepal 2014 Human Rights Report".

In a case that attracted media attention, torture reportedly contributed to three individuals falsely confessing to the murder of an individual later found to be alive. On February 11 [2013], police in Okhaldhunga district arrested five individuals for the abduction and murder of their neighbor Gyan Bahadur Majhi, missing since November 2013. Police released two of the suspects, but three individuals, Chitra Bahadur Majhi and his sons Kamal Bahadur and Surendra, confessed to the killing. In April the alleged victim was seen alive. Police released the three accused and launched an investigation. Criminal complaints were pending against the police officers, who allegedly used torture to obtain false confessions, as well as civilians who allegedly conspired to frame the accused.

In 2012 a prison and detention center monitoring report by the Office of the Attorney General (OAG) indicated that nearly 15 percent of detention center detainees were subject to abuse that amounted to torture, generally described as beating a detainee's soles with the guard's hands, fists, or a bamboo stick, or being kicked with police boots. The report added that 25 percent of detainees reported verbal abuse and 10 percent reported physical abuse. According to the report, many detainees said they deserved abuse for not following orders.

Cases of police and prison official mistreatment of inmates are apparently widespread. Legal cases against these individuals are not. The issue is then the implementation of the mechanisms to provide recourse on allegations of torture and abuse laid out in the Compensation Relating to Torture Act of 1996. The monitoring of conditions and means of reporting abuses in a way that is accountable to those harmed is lacking. It should also be pointed out that pastor Shakti Pakhrin and his seven colleagues reported torture during their short stay in detention following their arrest on conversion-related charges.¹⁵

Conclusions

The new constitution adopted on 20th September 2015 declares the country a secular state and defines secularism as “protection of the age-old religion and culture and religious and cultural freedom.” According to legal experts and leaders of religious minorities, the constitutional stipulation to protect the “age-old religion” was interpreted by the drafters of the constitution to mean protection of Hinduism. The constitution stipulates every person has the right to profess, practice, and protect his or her religion. The constitution also prohibits persons from converting other persons from one religion to another and violations are punishable by law. This last provision opens the door to prosecution of missionary activities and is not in line with international standards.

¹⁵ Barnabas Fund. “Eight Christians in Nepal released from prison but conversion charges remain”.