

Table of Contents

- [***Pastor in Nepal jailed for more than three months released on bail***](#)
 - [***Three charges filed against Pastor Keshav Raj Acharya***](#)
-

Pastor in Nepal jailed for more than three months released on bail

Charges violate religious freedom rights, advocates say.

Morning Star News (29.07.2020) - <https://bit.ly/31qfOC0> - A pastor arrested in Nepal in March on charges that violate religious rights, and then re-arrested moments after release in April, was released after paying an exorbitant bail this month, sources said.

First arrested on March 23 on charges of spreading false information for saying prayers can heal the novel coronavirus, pastor Keshab Raj Acharya had been released on April 8 only to be re-arrested moments later on charges of "outraging religious feelings" and "proselytizing." After more than three months in prison, he was released on July 3 after paying bail equal to about \$2,500, sources said.

"It was very difficult for me," Pastor Acharya told Morning Star News. "I would think of my little children and my wife, and I would cry out to the Lord in prayer. I would look up at Him in hope that if it is in His will that I should be put through this, He would get me out of this."

Government officials and police worked together against him, he said.

"They were laying a thorough plan to make sure I would stay in the jail for a longer period," Pastor Acharya said.

The charges against the father of two young children violate a freedom of religion agreement to which Nepal is a signatory, rights advocates and Christian leaders in the Himalayan country said.

"I was released on bail after my wife paid 5,000 Nepalese rupees [US\$41] on April 8, but after few minutes I was again taken into custody," Pastor Acharya told Morning Star News.

When he asked why officers were arresting him again, police said he had gone against Nepalese religious customs by distributing gospel tracts in several places, he said. Officers further questioning him mocked and harassed him as they ordered him to explain each photo they found in the cell phone they had confiscated from him, he said.

Pastor Acharya had stored files of and about gospel tracts on his mobile phone. Seeing photos of different areas of Nepal and people he had met there, the officers mocked him, saying he had been to every district, and that the photos were solid evidence against him, he said.

"They ridiculed, 'Oh, you have gone all around this country preaching about Christ against the Sanathan Hindu culture and customs. You are a threat to our nation. You should not be let go that easily,'" Pastor Acharya said.

When he asked officers why he was held in custody so long despite cooperating in every possible way, they spoke respectfully to him while at the same time fabricating false charges against him, he said.

"The officers told me, 'Sir, you are not a criminal. You are a man of God. The Lord will save you,' but they would twist the context of my narration and write statements on their own to only make the cases against me stronger," Acharya told Morning Star News. "Only when I was produced before the judge did I get to know what all they have written about me. And, each time I was surprised to see the police twisting my statements and presenting them before the court so that the judge would really think I am a threat to national security."

Police filed charges of outraging religious feelings and proselytizing, and on April 19 a Kaski District judge set a bail of 500,000 Nepalese rupees (US\$4,084), considered disproportionately high for the level of charges against him.

"Every time I had asked the police to show me the statements they have written about me, they did not allow me to read them and took my signatures without me reading a word," the pastor said.

Transfer to Dolpa

After 25 days, police planned to transfer him to the more remote Dolpa District jail, which has a reputation for mistreatment and poor conditions.

On May 13 officers arrested him from court premises on a third set of charges and sent him to the Dolpa jail. They treated him like a most-wanted criminal, stopping at every police station along the way and frequently changing the personnel taking him on the three-day trip, he said.

"Some of the police personnel who accompanied me did not wear masks," Pastor Acharya told Morning Star News. "I was offered food in plates that were not clean, and especially since the COVID-19 spread in Nepal was rising, I had concerns about safety and hygiene. But I gave thanks and ate whatever they offered."

Accusing Pastor Acharya of printing and distributing gospel tracts, the Dolpa District Attorney's office on May 21 filed charges under the Nepal Criminal Code's Section 158(1), which prohibits converting anyone from one religion to another, and Section 158(2), which prohibits undermining one's religion with the intention of converting another person.

He was denied bail on May 22, but more than a month later the district judge reviewed the order decided to release him temporarily on bail of 300,000 Nepali rupees – about \$2,500. Five days after the order, he was released on July 3, he said.

Pastor Mukunda Sharma, executive secretary of Nepal Christian Society, told Morning Star News that Christian individuals and organizations concerned about religious freedom around the world came forward to extend support in prayer and action. The Nepal Christian Society's Rapid Response Team formed a three-member committee to work on his case soon after hearing about it, he said.

"We had talks with the police officials at all the three police stations where Pastor Acharya was framed in cases of spreading false information that prayers could heal COVID-19 and outraging religious feelings and proselytizing Hindus to Christianity," Pastor Sharma said. "Since Nepal is a secular state and the constitution of Nepal guarantees religious freedom and the freedom of expression to all the citizens equally,

the committee studied Pastor Keshab's case and came to the conclusion that he had been falsely framed in cases that are against the Nepalese law of the land and also international human rights laws."

The society hired Supreme Court lawyer Govinda Bandi and petitioned the court, but their pleas were rejected.

"All through the imprisonment, Pastor Acharya was treated like a notorious criminal. His hands were tied behind as police shifted him from place to place," he said. "Worried by the arrest and inhumane treatment of Pastor Keshab Acharya, the Nepal Christian Society along with individuals and organizations from across the globe petitioned the attorney general of Nepal, Mr. Agni Kharel, to drop all the wrongful charges against Pastor Acharya and uphold the freedom of religion and belief."

Thankful for support

Pastor Acharya's wife, Junu Acharya, told Morning Star News she wished to thank all who have prayed for and supported her family throughout the ordeal.

Unable to pay the rent on their worship facility, she added, the church has vacated the building.

"Outraging religious sentiments" under Section 158 of the Nepal Penal Code is punishable by up to five years in prison and a fine of up to 50,000 Nepalese rupees (US\$403). Under Section 156, it is punishable by up to two years in prison and a fine of up to 20,000 Nepalese rupees (US\$163).

While Nepal's 2015 constitution establishes it as a secular and democratic republic, its definition of "secular" appears to protect Hinduism and allows others only to worship in their own faiths. Article 26 forbids anyone to "convert a person of one religion to another religion, or disturb the religion of other people."

Advocacy groups have detected increased enforcement and other anti-Christian efforts as officials seek to placate Hindus incensed that the new constitution did not re-establish a more prominent place for Hinduism. A landlocked country between the giants of India and China, Nepal is said to be more than 75 percent Hindu and 16 percent Buddhist. Christians are estimated to make up nearly 3 percent of Nepal's population, and Muslims 4.4 percent.

Legal advocacy group Alliance Defending Freedom's allied attorney in Nepal said Christians who were once primarily hit with false accusations of "forcible conversion" are now being charged with preaching or speaking about their faith publicly.

An increase in persecution of Christians in Nepal began after a new criminal code was passed in October 2017, which took effect in August 2018.

By criminalizing conversions, Nepal has infringed on the fundamental freedom of religion or belief which is guaranteed not only by its constitution but also secured by several international covenants, according to ADF-International.

"Nepal's constitution prohibits the attempt of religious conversion," according to an ADF press statement. "At the same time, Nepal is a signatory to the International Covenant on Civil and Political Rights, an international treaty explicitly protecting freedom of religion and expression."

Nepal is ranked 32nd on Christian support organization Open Doors' 2020 World Watch List of the countries where it is most difficult to be a Christian.

Three charges filed against Pastor Keshav Raj Acharya

Urgent call for the dropping of all charges against Christian Pastor Keshav Raj Acharya. An initiative of CSW, Jubilee Campaign and Wilberforce.

By 7 July, 2020

Dear Sir,

We, the undersigned, are a group of individuals and organizations who collectively strive to promote freedom of religion or belief and human rights around the world. We are writing as we are concerned by Nepali authorities treatment and arbitrary arrest and detention of Pastor Acharya.

We understand and respect that Nepal - like many countries - is having to deal with the struggle of the spread of the novel Coronavirus. As a result, many countries around the world have had to take several extreme measures. These measures however, should not extend to infringe upon fundamental human rights.

The UN Special Rapporteur on freedom of religion or belief noted that, "The pandemic has caused a flare-up in existing religious intolerance in many countries."¹ The UN High Commissioner Bachelet also recently released a statement expressing alarm at the clampdown of freedom of expression in Asia during COVID-19 with a disregard in upholding the international principles of "legality, necessity, proportionality" and serving a legitimate public health objective and choosing the "least intrusive" approach required.²

We regret to see this being the case regarding the arbitrary arrest and detention of Pastor Acharya following a statement to his congregation shown on YouTube:

- On 23 March, the Kaski District Police arrested Pastor Keshav Acharya from his home. No arrest warrant was presented to him at the time of arrest until the next day. The arrest warrant accused the pastor of an offence against Public Peace by disseminating false information.
- Pastor Acharya who was held in detention for 16 days, was denied access to meet his family. On April 8 at Kaski District Administration Office, the police accused Pastor Acharya for disseminating false information by making a statement saying "Jesus can cure Corona" and praying for the stop of the

¹ Office of the High Commissioner on Human Rights, United Nations Special Rapporteur on freedom of religion or belief, *UN expert warns against religious hatred and intolerance during COVID-19 outbreak*, 22 April 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25814&LangID=E>
[accessed 24 June 2020].

² Office of the High Commissioner on Human Rights, UN High Commissioner for Human Rights Michelle Bachelet, *Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19*, 3 June 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920&LangID=E>
[accessed 24 June 2020].

Coronavirus in Jesus' name.³

- On April 8 Pastor Acharya was given bail at 5000 Nepali Rupees. Although, he paid the sum, he was not released.
- A second arrest warrant was handed down to Keshav on 9 April 2020, with a new charge against him for committing an offence relating to religion. The police kept him incarcerated as the case was "under investigation."
- On 16 April another charge sheet was filed against the Pastor Acharya accusing him of proselytisation by disseminating alleged false information, an offence under Section 158 and (2) of Muluki Criminal Code Act 1074. The Kaski District Court issued an order on 19 April 2020 asking for an 500,000 Nepalese rupees in bail. According to a lawyer dealing with the case this amount was, "disproportionate to the penalties"⁴ under both Section 158 (prohibition of proselytization) and Section 156 (outraging religious feeling) of the Criminal code combined.
- Despite paying the exorbitant bail on 13 May 2020, the police rearrested Pastor Acharya from the premises of the Court. A third arrest warrant was handed down to Keshav stating that he would be transferred to the Dolpa police station and he was transferred from his hometown in Pokhara to District Police Office in Dolpa for "further investigation."⁵ No reasons were given to him for the transfer. His wife only found out about his relocation to Dolpa after the fact. Dolpa District is located in a remote part of Nepal which makes both legal access and visits from his family virtually impossible given the nationwide lockdown.
- On 21 May 2020, the office of the District Attorney Dolpa submitted a charge at the Dolpa District court in the allegation of distributing books and pamphlets under Section 158(1) and Section 158(2) of Muluki Criminal Code 2074.
- On 22 May 2020, the Registrar of the District Court Dolpa denied bail to Keshav Acharya and sent him to jail for further trial.
- On 28 Jun 2020, however, the District Court Judge reviewed the Order issued by the Registrar on 22 May 2020 and decided to temporarily release him on bail amounting 3,000,000 Nepali Rupees until the final hearing of the case.
- On 30 June 2020, Pastor Acharya was released from Dolpa prison after his lawyer deposited the bail amount.

In summary, a total of three charges have been filed against Pastor Keshav. The authorities handling of the case shows a lack of concern for rule of law and an unlawful limitation of freedom of speech and religion guaranteed by the Nepali constitution.

By first denying the bail applications and then subsequently set exorbitant bail amounts set, are a denial of justice and due process and highlight the failure of the rule of law.

The Police have shown discriminatory practice of the laws by arresting Pastor Acharya directly against Article 17(2a) 18(2) and 26 of the Constitution of Nepal. Pastor Acharya was practicing his freedom of religion and expression afforded to him under the Constitution.⁶

Praying for healing is an integral part of the Christian faith for many as Jesus prayed

³ Keshab Acharya. "Protection in Christ~Keshab Acharya || Nepali Christian Sermon." Youtube, 22 Feb 2020, available at: <https://www.youtube.com/watch?v=EJucUpdBwRg&t=8I9s> [accessed 24 June 2020].

⁴ *Keshav Raj Acharya v. Kaski District Court, Kaski District Police Office, Kaski District Attorney Office, Kaski Prison Office, Dolpa District Police Office, Dolpa District Court and Central Police Office Naxal Kathmandu*,

Petition of Writ of Habeas Corpus, filed in Supreme Court 2077 Jesh 1 Thursday.

⁵ *Keshav Raj Acharya v. Kaski District Court, Kaski District Police Office, Kaski District Attorney Office, Kaski Prison Office, Dolpa District Police Office, Dolpa District Court and Central Police Office Naxal Kathmandu*, Petition of Writ of Habeas Corpus, filed in Supreme Court 2077 Jesh 1 Thursday.

⁶ Constitution of Nepal 2015, available at <http://www.lawcommission.gov.np/en/archives/981> [accessed 26 June 2020].

and gave healing. In addition, the alleged statement by the Pastor did not in any way discourage anyone from seeking medical treatment for the coronavirus.

Nepal is also party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 and 19 of the ICCPR reaffirm Pastor Keshav' s right to freedom of religion or belief and freedom of expression. While Article 19 allows for certain restrictions, "these shall only be such as are provided by law and are necessary," they can also not be applied discriminatorily.⁷

The Human Rights Committee have concluded that arbitrary arrest of a person can never be compatible with the restrictions cited in Article 19.⁸ In addition the application of Section 158(1) and (2) of Muluki Criminal Code 2074 does not meet the standards of legality as the laws lack clarity according to Article 15 (1) ICCPR. Therefore, according to Section 9(2) of the Treaty Act of Nepal 1990 if there is any contradiction between international treaty and Nepali laws, the international law prevails.

In Pastor Acharya' s case, the authorities applied the law even though his speech was directed to his congregation,"intention of making such conversion" is left to the subjective view of the authorities, the authorities also demanded larger bail amounts than the laws warranted.

It is in the spirit of respect and commitment to international obligations that we urge you as the Attorney General of Nepal, to reaffirm Nepal's commitment to upholding freedom of religion or belief and direct that the wrongful charges against Pastor Acharya be dropped completely.

Left unchecked, the arrests and rearrests of Pastor Acharya will set an unhealthy precedent that will further deteriorate the safeguards promulgated under Article 26(1), restricting the freedom of religion and belief of Christians and other religious minorities for simply expressing basic tenets of their belief.

We look forward to hearing back from you, and wish you well in the continuing efforts to uphold human rights and bring lasting peace to Nepal.

Respectfully,

Signatures: <https://wilberforce.salsalabs.org/justiceforpastorkeshav/index.html>

To: Honorable Attorney
General,
Mr. Agni Kharel,
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⁷ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 1 July 2020] para. 26.; Office of the High Commissioner, COVID-19 Response, *Emergency Measures and Covid-19 guidance*, 27 April 2020, available at: https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed 1 July 2020].
⁸ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 1 July 2020], para. 23; Communication No. 1353/2005, *Njiru v. Cameroon*, Views adopted on 19 March 2007.

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