

**Policy Brief on  
The Situation of FoRB for the Religious  
Minorities in Nepal**

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## **List of Acronyms/Abbreviations**

FoRB:	Freedom of Religious Beliefs
UDHR:	Universal Declaration of Human Rights
CEDAW:	Committee on the Elimination of Discrimination against Women
CERD:	Committee on the Elimination of All forms of Racial Discrimination
UPR:	Universal Periodic Review
ICCPR:	International Covenant on Civil and Political Rights
HDI:	Human Development Index
CBDU:	Caste Based Discrimination and Untouchability
ICJ:	International Court of Justice
NCF:	National Christian Federation
NEFIN:	Nepal Federation of Indigenous Nationalities
PADT:	Pashupati Area Development Trust

## 1. Executive summary

The religious minorities in Nepal suffer from structural exploitation, discriminatory state behaviour and exclusionary social institutions. A cursory analysis of the available data<sup>1</sup> indicates wide range of disparities among the religious minorities and dominant religion in Nepal. This discrimination is primarily based on centuries-long tradition that has deeply been embedded in political exclusion, socio-economic deprivation and religious discrimination.

Different policy measures have been adopted to protect the rights of religious minorities over the period of time. Interim constitution 2007 declared Nepal as a secular state, and this has put to an end the prevailing domination of single religion. Prior to that, Nepal had been an official Hindu state since 1962. Nepal entered into a new era of political transformation by the promulgation of the new constitution with federalism, secularism and republicanism in the year 2015. The new constitution has guaranteed an array of civil, political, social, economic and cultural rights for the religious minorities. In addition, the constitution guaranteed special measures for minorities to enable them and to enjoy their fundamental rights to representation in the state mechanisms. Furthermore, Nepal has consolidated its legislations related to criminal offense through penal code which replaced the country code of 1963. There is a dedicated chapter in the new penal code on discriminatory religious offence.

The constitution of Nepal guarantees the right of individuals to freely "profess, practice and preserve" their religion. However, this very constitution failed to guarantee the right to freedom of thought and conscience. Likewise, the narrow definition of the freedom of religion in the article 26 failed to guarantee the right to manifest one's religious beliefs. This provision of the constitution is inconsistent with the right to freedom of religion or belief as guaranteed in the Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

Nepal is state-party to several international human rights treaties and thus, is accordingly obliged to implement them fully. Nepal became the party to the International Covenant on Civil and Political Rights in 1991 and it has agreed to respect, protect and fulfil the rights guaranteed therein. This means that the state must refrain from interfering with or curtailing the enjoyment of human rights. Similarly, the right to freedom of religion or belief is guaranteed by the other international human rights instruments and treaties.

Article 19 (1) of the ICCPR guarantees the right of everyone to hold the opinion without interference, and Article 18 (1) guarantees the right to everyone to freedom of expression to manifest one's religion or belief in worship, observation, practice and teaching either individually or collectively both in public and private spaces. The blasphemy law of the country contradicts this instrument. In 2017, Nepal introduced new laws that not only criminalize blasphemy, it could also lead to an offense for other religions. According to Nepal's Penal Code, a person convicted of 'hurting religious sentiments' could face up to two years' imprisonment and a fine.

The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that the right to freedom of thought, conscience, religion or belief include the freedom "to write, issue and disseminate relevant publication, and to teach a religion or belief in places suitable for the purposes. Freedom of Religion or Belief (FoRB) is guaranteed by article 18 of the Universal Declaration of Human Rights (UDHR), Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The UN Declaration on the Elimination of All forms of

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<sup>1</sup> (Binod Pokharel 2020)

Intolerance and of Discrimination based on Religion or Belief is an important mechanism to protect to the human rights of religious minorities.

Nepal underwent through its 3<sup>rd</sup> Universal Periodic Review (UPR) in January, 2021. It has received recommendations to take all necessary policy measures to protect the rights of persons from religious minorities and ensure freedom of religion or belief in law and practice in accordance with international human rights law. However, the Government of Nepal has not effectively implemented various recommendations and observations received from treaty bodies and other mechanisms in advancing Freedom of Religious Beliefs.

## 2. Introduction

The main purpose for preparing this policy brief is to inform on the violations against religious minorities in Nepal. It further maps the situation of the Freedom of Religious Belief (FoRB) of the religious minorities in Nepal and further analyse the casual links between violence and discrimination based on religion or belief.

Nepal is a diverse country in terms of caste/ethnicity, language, religion and culture etc. Nepal was a sovereign Hindu monarchy for 240 years. After a 10-year civil war ended in 2007, the country has been a federal and secular republic since 2008. The current constitution, adopted in September 2015, upholds the country's federal and secular identity. It protects each person's right to profess, practice, and preserve his or her religion, and each religious community's right to maintain and manage its religious places and trusts in accordance with the law.

Nepal promulgated a new constitution in 2015. The preamble of the constitution made a commitment to end inequalities based on class, caste, religion, and language to end economic inequality and ensure social justice through proportional inclusion and participatory mechanism<sup>2</sup>. There are 125 ethnic communities and 11 major religions that exist in Nepal. The country's 2011 national census<sup>3</sup> reports that 81.3 percent of the total population is Hindu; 9 percent is Buddhist; 4.4 percent is Muslim; 1.4 percent is Christian; and the remaining 3.9 percent comprises Kirats (followers of an indigenous religion with Hindu influences), Bon (followers of a Tibetan religious tradition), Jains, Baha'is, Sikhs, and others. The Constitution has recognised the secular nature of the state. It guaranteed individual's rights to freely "profess, practice and preserve" their religion and prohibit discrimination based on the religious ground.

Despite these policy measures, the religious minorities continue to face several problems including hate speech, harassment, intimidation, and violent attacks. Religious minorities are ridiculed with awful titles and labels. These stereotypical views and opinions are widely disseminated and amplified via digital space and social media. The social media has provided a level of play-ground to this end. It is the duty of the state to protect minorities but, the state's indifferent attitude/behaviour has further exacerbated hostility and intolerance. Therefore, this policy brief attempts to analyse the casual link between violence and discrimination based on religion or belief which limits the enjoyment of FoRB for the religious minorities.

The constitution of Nepal as well as the new Penal Code 2017 retain a range of provisions prohibiting and criminalizing "proselytism" in a manner that is incompatible with the international practices.

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<sup>2</sup> (Biswokarma, Prosperity Discourse in Nepal and Dalits 2019)

<sup>3</sup> (Nepal 2011 )

Similarly, the new Penal Code contains numbers of provisions that criminalize "hurting religious sentiments and feelings." If we see around the world, such laws are often resulted in abuse for religious minorities.

Article 18 of the constitution provides equality before law, which means that there shall not be any discrimination based on origin, religion, race, caste, tribe, sex etc. Similarly, Article 29 of the constitution prohibits exploitation on the basis of region, custom, culture, practices or any other bases. In addition, Article 38 mentioned that there shall not be any physical, mental, sexual, or psychological violence against women, or any kind of oppression based on religion, social and cultural tradition, and other practices.

### **3. Methodology**

The following methods have been applied to collect data to develop this policy brief:

#### **3.1 Literature review:**

The constitution, 2015 and the Penal Code were thoroughly reviewed from religious minorities' perspective. In addition, other studies and the information to that end have been collected. An attempt was also made to study the report submitted to the international human rights mechanisms and their implementation gap. Similar efforts were also put in place to explore how such recommendations have been integrated into government policy, programs and the budgetary allocations.

#### **3.2 Key Informant Interview (KII):**

At least 5 Key Informant Interviews (KII) were conducted with the representatives of the Muslim, Christian, Kirants and Dalits who are engaged in the policy formulation and its implementation.

### **4. Finding/Analysis**

The constitution of Nepal, 2015 as well as the Penal Code, 2017 provides the legal framework to the right to freedom of religion or belief. These two major laws largely address the rights of the religious minorities in Nepal.

Nepal is declared a secular state by the second constituent assembly in 2015. However, predominant Hindu nationalists aroused a strong protest to retain Nepal as a Hindu state. This led to the first amendment of the constitution where the meaning of the secularism was amended. Article 4 of the new constitution describes Nepal as the secular state, but defines it as- the religious and cultural freedom, along with the protection of religious and customs practiced from ancient times. This clause of the constitution retains the secular character of the state.

The articles of the clauses 156 (Prohibition of outraging religious feelings), 157 (Prohibition of causing obstruction to religious rites and rituals) and 158 (Prohibition of proselytizing) of the Penal Code 2017 retain a range of provisions prohibiting and criminalizing "proselytism" in a manner that is incompatible with the international practices. Similarly, the new Penal Code contains numbers of provisions that criminalize "hurting religious sentiments and feelings." If we see around the world, such laws are often resulted in abuse for religious minorities. Following are the situation of religious minorities concerning to the situation of religious freedom or belief in Nepal.

#### 4.1 Muslims:

Muslims share 4.4% of the total national population and they are the most vulnerable religious minorities in Nepal. They are routinely used as the soft target. Nepal shares an open border with India therefore any communal acts of violence there spills over Nepal causing harm and damage to Nepali Muslims. For example, in April 2020, Indian media ran a malicious propaganda against Muslim community accusing them that they are the virus carrier. This led them to further societal stigmatization, harassment, and discrimination for allegedly causing or spreading the virus. This resulted into the bigotry, hate speech and cruelties to Nepali Muslim too. A Muslim woman named Zainab Khatoon<sup>4</sup> died of police brutality when she tried to save her son from the police arrest.

The constitution has the provision of affirmative action to address inequalities and discrimination. This has proved to be a powerful tool to mainstream the traditionally marginalized communities. However, the Muslims are still deprived of opportunities while other socially marginalized groups enjoying the affirmative action in government jobs and scholarship. The successive government didn't take concrete action to implement the constitutional commitments. The recent verdict of the Supreme Court has curtailed the very notion of the affirmative action. The Supreme Court believe that some well-to-do groups in the target communities have been taking advantage of the reservation provision, this needs to be revisited.

The Human Development Index (HDI) of the Muslim community in Nepal is 0.422, which is the lowest among the other social groups. Muslism make up less than 1 percent of the total bureaucracy. Their presence in the gazetted level is almost nil and under-represented in the non-gazetted level. This disparity has been largely attributed by the low educational level.

In November 2016 on the occasion of the birth anniversary of the prophet Mohamad, Muslim rally was attacked by the Hindu mob in Banke district. Two Muslims lost their lives there in that incident. This has fundamentally breached their right to peaceful assembly guaranteed by the constitution of Nepal. This also shows that their civic space has been significantly shrunk.

Places of worship and graveyards of Muslims are registered as NGOs rather than religious places. This discriminatory arrangement has kept Muslims in fear because according to existing law, government can confiscate these properties after dissolution of NGOs. Recent incident<sup>5</sup> of wrongful detention and alleged suicide of a Muslim man named Hakim Shah inside police custody is an example of the extrajudicial killing. It was followed by the hate speech of some people justifying his death, so much so that marches were conducted to protect the perpetrator. This denial of appropriate action by authorities on the pretext of a possible law and order situation has set wrong precedence.

Muslims have to face discrimination in many forms; untouchability being one of them. State has been discriminatory in the matter of national holidays. Holidays on festivals of Muslim communities is sometime given as national holiday and sometimes confined to community holiday only. The latter is problematic because examinations of Educational Institutions are scheduled on these particular

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<sup>4</sup> (Shaheed 2020)

<sup>5</sup> (Bamsakar 2021 )

days and students from Muslim communities have to make a difficult choice in between two options: either miss celebration of festival to sit for exams or miss exams to celebrate festivals.

Many Muslims are lodged in jail on the charge of slaughtering cow. Many face discrimination and violence from society and state mechanism. Muslims also faced discrimination in hospitals, relief distribution and the quarantine during the pandemic.

#### **4.2 Buddhist**

Buddhism is the second-largest religion in Nepal. According to 2011 census, **9% of Nepal's** population practice Buddhism, mostly the Newar.

Historically, the Buddhist are able to freely practice their religious faith or belief. Lately, the Tibetan Buddhists- who have fled or are fleeing China for Nepal or who travel through Nepal en route to India for religious practices have been facing different problems. This could also be due to the China's position on Tibetan issue. For example, in November 2016 the government of Nepal arrested 41 Tibetan<sup>6</sup> Buddhists as they travelled through Nepal en route to India, and deported them to China.

#### **4.3 Kirats:**

Kirat is another important and fourth most followed religion in Nepal. 3.04 percent people in Nepal follow and practice Kirat religion and mostly practiced by the population belonging to the Kirati ethnicity. Initially, it was considered a part of the Hinduism but now it is treated as a separate religion. Basically Rai, Limbu, Yakkha, Sunuwar are the Kirati people in Nepal.

In May 2019, four individuals were arrested in Kathmandu on the charge of slaughtering cow<sup>7</sup>. On the one hand, the cow is the national animal and its slaughtering is strictly prohibited in the country. On the other hand, certain Janajatis/Dalit enjoy eating beef from pre-historic time. Despite Nepal as a secular state, the state and its agencies used this as the tool of caste terror<sup>8</sup>. As a result, Dalits and Janajati are forced to self-impose ban on certain food habits.

"The religion of the Kirati people is intrinsically linked to their culture. They complain that many people treat both culture and religion as synonymous terms but they are different. Some deliberate efforts are being made at policy changes that contradict the underlying idea of the indigenous culture of the Kirati people. Hindu extremists' interruption of a traditional funeral of Kirats at Pashupati area, slaughtering of cow are the consequences of such policy interventions." opines Gobinda Chhantyal, vice chairperson of the Nepal Federation of Indigenous Nationalities (NEFIN).

#### **4.4 Christians:**

The 2015 constitution has the provision that criminalize "any act to convert another person from one religion to another or any act or behaviour to undermine or jeopardize the religion of another." In addition, the amended penal code has the provision of punishment of a fine to up to five years in prison. Nepali Christians have reported<sup>9</sup> that local government and law enforcement agencies have interpreted the constitutional provision as criminalizing no coercive proselytization. They have been

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<sup>6</sup> "Nepal detains Tibetans traveling to India," New York Times, accessed Nov 20, 2021. <https://www.nytimes.com/2016/11/18/world/asia/nepal-detains-tibetans-traveling-to-india.html>

<sup>7</sup> "Four men caught for slaughtering ox," Kathmandu Post, accessed 21 Nov, 2021. <https://kathmandupost.com/valley/2019/05/06/four-men-caught-for-slaughtering-ox>

<sup>8</sup> "Criminalization of cow slaughter is a tool of caste terror," Record Nepal, accessed 22 Nov, 2021. <https://www.recordnepal.com/criminalization-of-cow-slaughter-is-a-tool-of-caste-terror>

<sup>9</sup> CB Gahatraj, telephone conversation with the author, December 5, 2021.

increasingly harassed—and in some cases detained by local governmental officials—due to allegations they were converting<sup>10</sup> Hindus, especially Dalit Hindus.

Every religious group have their own funerary rites. Christian and Muslims in Nepal repeatedly face serious impediments to performing the last rites for the deceased, especially in the capital city. The Pashupati Area Development Trust (PADT) barred Christians from burying deceased bodies in that area. However, the state agency intervened in this issue and breached the very notion of the secularism. A case was filed in this regard, where the Supreme Court issued directive order, saying that protection of one's religious practice from encroachment/violation by another is within the rights of the secular state. This is also an example of discrimination. The Supreme Court also suggested to purchase a land for the establishment of the cemeteries, this is also discriminatory because all religious institutions might not have necessary fund to buy them. This gives rise to the concern about state's commitment to comply with the state's role to fulfil the right to freedom of religion or belief.

Similarly in the Article 26 Right to freedom of religion in clause number (1), it is written that every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or her conviction. This clause needs to be made specific that any one will have the right to choose, change, influence, practice, propagate, teach, train or leave a faith or religion on his own will. Instead clause number 3 of Article 26 introduces more restrictions on religious freedom as it reads.

The new Penal Code has the provision of laws that puts indirect restrictions and criminalize religion conversion. This has actually created an environment of fear and insecurity among the Christian minorities. On top of that, the Christian minorities' belief or faith is being constantly questioned. Such acts<sup>11</sup> likely to provoke religious harmony in the society.

#### **4.5 Dalits**

Dalits are the group of people who are placed at the bottom of social hierarchy and treated as untouchables within the Hindu religion. To address this, the government has implemented the Caste-based Discrimination and Untouchability (Offense and punishment) Act in 2011. Unfortunately, more than 3 dozens of Dalits have been killed since the implementation of this act. The majority of the perpetrators still go unpunished. In May 2020, a massacre took place in Rukum, where Navaraj BK, a 21-year-old boy and his five other friends from Jajarkot were mercilessly beaten up, killed and then thrown into the nearby river. The family and the member of the victims are still waiting for justice.

Most official festivals in Nepal align with the Hindu calendar and numbers of the discriminatory provisions still persist such as the prohibition of cow-slaughtering, which leads to the prosecution of many indigenous and Dalit individuals who have traditionally relied on cows for their subsistence or religious practice. In recent times, there is an increased communal tensions in the country. Certain Hindu groups have started declaring religion conversion restricted area<sup>12</sup>. This doesn't take much effort to arrive to the conclusion that the discriminatory provisions in the 158 section of the Penal Code has encouraged such attempts. The Special Rapporteur on Freedom of Religion and Belief has sent a country visit request in 2017 but the government has not agreed to the visit yet.

Despite constitutional provisions, Hindu Dalits continue to suffer from significant societal discrimination, ostracism, and harassment by higher-caste individuals and Hindu nationalists,

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<sup>10</sup> "Nepal monitored," U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, accessed December 15, 2021, [https://www.uscifr.gov/sites/default/files/Monitored\\_Nepal.ppt](https://www.uscifr.gov/sites/default/files/Monitored_Nepal.ppt)

<sup>11</sup> Prime Times Television. "Janata Janna Chahanchan." Accessed December 20, 2021. <https://www.youtube.com/watch?v=QmlkVLmGQw>

<sup>12</sup> (ICJ 2018)

especially in rural areas of Nepal. Some Dalits started choosing religious conversion as an escape from the caste system. However, it is being interpreted as the attraction towards monetary gains.

## **5. Conclusion and recommendations**

The government has taken legal measures to prohibit religious conversions from the dominant religious group. The anti-conversion law in Nepal limits the ability of religious groups to proselytize and the freedom of individuals to convert to a different religion. Historically such laws are used by the extremist and majority religious groups as a tool to intimidate and prevent religious minorities from exercising their right to freedom of religion and freedom of conscience.

Recently, Nepal has witnessed the general conventions of the major political parties and it revolves around the agenda of Hinduism. This agenda continues to dominate in the upcoming elections. Therefore, the religious minorities are concerned about the growing Hindu nationalist influence within the major political parties and their subsequent impact. This may give rise to the use of violence, discriminatory acts and religiously motivated rhetoric's against religious minorities. After the careful analysis of this study, following recommendations have been made to ensure the rights of the religious minorities in Nepal:

- Repeal or amend its constitutional and legal provisions on religious conversions and the criminalization of the treatment of cows to bring them into compliance with international religious freedom standards,
- Amend the discriminatory clauses in the constitution, such as article 4 of the constitution. No extended definition is required to define secularism. Also, amend article 26 (1) and 26 (3) to make the right to religious freedom compatible with the right to freedom of religion or belief guaranteed in the Article 18 of the ICCPR.
- Repeal or amend sections 155, 156 of the Penal Code, 2017 in order to make them consistent with the international best practices as guaranteed under the international covenant on civil and political rights.
- Include the requirement of the proof of deliberate and malicious intent in all offences related to the religion that are retained in the section 155 and 156 of the penal code. Similarly, revise section 158 of the Penal Code that criminalize converting anyone from one religion to another to ensure that only forceful conversion entails coercion and/or undue influence.
- Researcher and activist can collectively challenge the dominant/majoritarian narrative of the ruling elites, and to create an alternative narrative of the religious minorities
- Set up an effective monitoring and evaluation system to keep track of the progress on the recommendations received from the international human rights mechanisms. Such recommendation must be translated into action into the policy, programs and budgetary allocations of all layers of the government.
- A progressive electoral system must be adopted so as to increase the numbers of religious minorities in the federal and provincial assemblies as well in the local government.
- Religious minorities must be provided with the appropriate sites for use as cemeteries.
- The Government of Nepal must accept the country visit request of the Special Rapporteur on Freedom of Religion of Beliefs to review the human rights situations of the religious minorities in the country.
- Bring all religious minorities together to have a robust discussion on the protection and promotion of their collective rights as guaranteed by the national and international laws.

**Annex I: Major Human Rights Treaties signed by Nepal**

<b>Treaty</b>	<b>Signed date</b>
International Covenant on Civil and Political Rights (ICCPR)	14 May 1991
International Covenant on Economic, Social and Cultural Rights (ICESCR)	14 May, 1991
The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	30 Jan, 1971
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	December 18, 1979
Convention against Torture (CAT)	1991
Convention on the Rights of the Child (CRC)	22 April 1991
Convention on the Rights of Persons with Disabilities (CRPD)	3 January 2008
Committee on Migrant Workers (CMW)	22 Apr 1991

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