

Journal of Tikapur Multiple Campus

Vol.7; February 2024

ISSN: 2382-5227

Published by Research Management Cell (RMC)
Tikapur Multiple Campus, Kailali, Nepal

Inconsistencies and Challenges around ‘Secularism’ in Nepal

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Abstract

Although Nepal adopted secularism in 2015 as its official state-religion relationship, there are still several inconsistencies and challenges around it including that of freedom of religion or belief. Instead of adopting a gradual marginalization and privatization of religion as per the normative proposition of the secularism, Nepal continues to do the opposite or at times, make a fundamental departure from the notion of secular identity. The preservation and the reaffirmation of presence of religion in public sphere and preferential treatment to Hindu religion at the cost of others continues to create discrimination and pose challenges to implement secularism. These problems do not only seem to remain just non-congruent inconsistencies with the secular identity of the state at the theoretical level alone, but also seem to hinder inter-religious tolerance in practical terms such as right to freely profess, practice and preach religion, thereby impacting the lives of the religious minorities. Against this backdrop, this article examines the key legal-constitutional inconsistencies including state's practices, antagonistic socio-political narratives, and emerging challenges vis-à-vis secularism in Nepal.

Keywords: Nepal, Secularization, Hinduism, religion, faith, constitution, tolerance

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Introduction

Despite being secular, Nepal continues to live with Hindu religious character and therefore it is not free from the criticisms and challenges vis-à-vis secularism. Nepal's secular journey started back in 2007 when the Interim Constitution, for the first time, changed Nepal's status of the 'only Hindu state' of the world into a secular one. Later, this was further endorsed by the Constitution of Nepal in 2015. Today, even after many years of having adopted secularism in place, Nepal stands at a critical juncture surrounded by several inconsistencies and challenges around secularism.

As a landlocked country located in South Asia with an area of 147,516 square kilometers (56,956 sq mi) and a population of approximately 30.03 million, Nepal has a great diversity in its population. The last census in 2011 revealed that there are 124 languages being spoken in Nepal whereas 142 Caste and ethnic group are residing in a uniquely harmonized Nepalese society. Nepali is the official working language of the country, but in addition to this, the Constitution provisions each province to choose one or more majority language in addition to Nepali as official working language of the province. There are ten different religions recorded, viz., Hindu, Bouddha, Islam, Kirat, Christian, Prakriti, Bon, Jain, Bahai and Sikha respectively by their dominance in the last census 2021. Hinduism is practiced by about 81.19% of Nepalis, the highest percentage of any country. Buddhism is linked historically with Nepal and is practiced by 8.2% of its people, followed by Islam at 5.09%, Kirat 3.17%, Christianity 1.76%, and Prakriti(Nature Worship) 0.46%.¹ A large portion of the population, especially in the hill region, identify themselves as both Hindu and Buddhist, which can be attributed to the syncretic nature of both faiths in Nepal.

Thus, as a multi-cultural, multi-caste, multi-linguistic and multi-religious country, Nepal by and large did not have any critical problems with enjoyment of the religious freedom in the pre-secular history. However, there were voices in the political parlance that Hindu caste system was at the centerstage of various forms of discriminations and injustices among people of different castes and gender. Discriminatory behaviours towards Dalit communities, particularly in

¹ *National Census, 2021. (2021). Census Nepal.* Retrieved from <https://censusnepal.cbs.gov.np/>
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religious sphere were rampant. So was the situation of child marriage and menstrual discrimination against women on religious grounds. It was in this background, the decade-long (1996-2006) Maoist Revolution took place in Nepal aiming to end the feudal system and achieve a federal republic, new constitution and secularism, among others. The revolution that claimed the lives of over 17,000 people and the subsequent democratic political movements were obviously successful in gaining their political objectives of restoring democracy and a secular, federal republic. However, these upheavals have massively deconstructed the existing societal, religious and political structures redefining their relationship with one another and setting a challenging context for social cohesion. The inter-religious and inter-caste trust and harmony has eroded. Despite expectations of a more inclusive and accommodative state, minorities continue to struggle to enjoy these aspirational goals. Religion has come to be a key discourse in political life of the nation. The majority Hindu nationalist views that characterizes secularism as a conspiracy of western countries against Hindu religion are on the rise, fueling up already a skeptic and hostile discourse around secularism.

Furthermore, these phenomena have also challenged the perceived notion of national unity that Hindu traditionalists believed existed mostly in form of religious and cultural identity of the Hindu nationhood protected and anchored by the King. On the religious front, the end of monarchy marked a hugely perceived loss for traditionalist Hindu believers of Nepal and even beyond-who, by virtue of religion, regard the King with the highest respect and assume him of having divinely attributes. For them, the Monarchy was the custodian of the notions of *rajadharma* that means a composite set of royal duties, obligations, law and morality and the King was *dharmarakshyak*; the protector of religion. With the advent of secularism, these beliefs have turned irrelevant politically because the King as a head of the state has been replaced by the President, with the likelihood of getting anyone to this highest post irrespective of religion, gender, and caste, contrary to Hindu nationalist notion of the Kingdom.

While Hindu nationalists continue to question the change in the identity of the only Hindu country in the world, they seem to be establishing their agenda of reversal to Hindu nation by claiming that Hinduism is under threat due to the

Christian missionaries seeking to proselytize Hindus either by alluring or forcing them. They further claim that implanting of secularism in Nepal was never a result of sole endeavor of Nepali political aspirations, if at all, but a foreign agenda to create division among different religious communities, and make a legal, constitutional as well as cultural space for Christian conversion. This seemingly persuasive phenomenon can be seen evidenced by the pro-royalist Hindu political party (Rastriya Prajatantra Party) being endorsed as the fourth largest party in the parliamentary elections held under secular constitution in 2022. Likewise, a post-monarchy survey poll showed that around 52% people said political parties demanding reversal of Hindu State was 'right'.²

It is important to note here that Nepal underwent a huge loss of lives and property during a decade long armed conflict that resulted in a secular federal republic constitution but unfortunately the Nepali people don't seem to be convinced about the rationale of secularization of Nepal so well, and their skeptic views and actions thereof are potential to create real challenge for the religious harmony in future. Furthermore, multiple political forces are seen holding nationwide rallies and protests demanding a return of the monarchy and the Hindu state in recent years and interestingly, there is no public dissent against such demands. Likewise, constitutional ambiguity, adverse geopolitical environment and increasing hate speech incidents along the religious issues are critical challenges to foster secularism in Nepal. In this background, I seek to examine various inconsistencies manifest in the legal constitutional frameworks, state behaviors, and challenges thereof, many of which portend a gloomy picture for secularism in Nepal, potentially inducing intolerance against and causing unexpected consequences for religious minorities.

Legal-Constitutional Ambiguity in Definition of Secularism in Nepal

General observations

By the fact that there is no single trajectory so visible for how public and private spheres of religion can be differentiated, nor is there a uniform understanding of what secularism means. However, on the normative level, secularism is the notion that religion should be a private, personal, voluntary affair that does not impose upon other people. Public spaces and officialdom should therefore be religion-neutral according to secularists. It ensures that religions are treated fairly and that no bias

2 Himal Media. (2015). *Himal Media Public Opinion Survey, 2015*. *Nepali Times*, January 16-22, Issue No. 147.

exists for a particular religion at the cost of harm to others, and also that even non-religious believers are treated with equal respect.

In this light, Nepal's secularism is difficult to be juxtaposed with any available definitions. It does not appear to be an American concept of separation of church and state which believes in secular government essential to religious freedom. Neither does it equate to the French model of 'Laïcité' in which the State and religious organizations are separate and there are no state-run public worships. The State neither recognizes, nor subsidizes, nor salaries any form of worship. Nepal differs also with the Belgian model that adopts 'neutrality'; a concept which implies that the State itself has no particular religion or belief, and does not pass judgment on the religions or beliefs held by its citizens.³ India, on the other hand, has the secularism based on 'principled distance' that is poles apart from one-sided exclusion, mutual exclusion, and strict neutrality.⁴

If Nepal's secularism is assessed in light of these various democracies, there is ambiguity in locating Nepal's secularism. On the one hand, especially at the normative sense, it appears to be neutral to any religion while on the other, contradictions of neutrality concept are quite evident in various interpretations including that of the courts of law.

Understanding of the public at large is also highly divided. Majority people relate it as opposition to Hindu and in some cases Buddhism and a favor to Christianity. Even media, academia and legal practitioners make a blunt definition of secularism in its primeval context that focused on the Church-State separation in the West. As a matter of fact, these conceptions are confronted when the State shows preferential treatment to Hindu majority. In this light, Nepalese secularism does not look to create the separation wall between the state and the religion and there is nothing wrong in this idea as such. However, the problem is with the unfair treatment among the religious groups and unclear position of the State on its relationship with religions that offer a ground for subjective interpretations, ultimately leading to an adverse impact on the religious freedom of belief.

3 Velaers, J., & Foblets, M.-C. (n.d.). *Religion and the State in Belgian Law*. Retrieved from <https://classic.iclrs.org/content/blurb/files/Belgium%202014%20FINAL.pdf>

4 Bhargava, R. (2014). The Distinctiveness of Indian Secularism. *University of Delhi*. Retrieved from <https://iow.eui.eu/wp-content/uploads/sites/18/2014/05/Bhargava-04-Bhargava.pdf>

Ambiguity in Constitutional Assurances Obligations under International Human Rights Treaty Law

The Constitution of Nepal on its broader outlook offers a seemingly definitive character of the state-religion relationship. I reproduce the relevant Constitutional texts here in their entirety, so that they can be referred to in the course of my exposition:

Article (4) of the Constitution of Nepal stipulates that '*Nepal is an independent, indivisible, sovereign, secular, inclusive democratic, socialism-oriented federal democratic republican state.*' This, however, is not the only and absolute formulation. There is a next to a 'proviso' statement attached to this article that creates ambiguities. Known as the Explanation Clause of the Article (4), it reads, '*for the purposes of this article, 'secular' means religious, cultural freedoms, including protection of religion, culture being handed down from Sanatan⁵ (time immemorial).*'

The explanation clause fundamentally contradicts with its premises (mother clause i.e. Article 4) in the sense that it lays additional focus on the protection of religion, culture being handed down from *Sanatan* i.e. time immemorial. By the choice of word '*Sanatan*', this also innately implies circumlocution to affirm that the state shall engage in preferential protection of the Hindu religion. In general, the term *Sanatan* refers to Hindu religion. The formulation here intends to convey that although the State has adopted secularism as its religious polity, the State is not away from engaging in religious affairs. The State affirms its inclination and readiness to stand undeterred when it comes to the matters of protection accorded to *Sanatan*/Hindu religion. The formulation of text also means that the rest of the religions can enjoy religious and cultural freedoms whereas the religion, culture from *Sanatan* has protection privileges as well.

Furthermore, it also creates another layer of legal complexity as to what the term 'protection' would mean in relation to guarantee of religious freedoms. Whether 'protection' of religion and culture handed down from *sanatan* means any prohibitory measures to prevent proselytization of religious or non-religious believers or it means an additional preference to Hindu *sanatan* followers while it comes to funding them?

5 Sanatan, in Hinduism, denotes the “eternal” or absolute set of duties or religiously ordained practices incumbent upon all Hindus, regardless of class, caste, or sect.

From international human rights law point of view, this ambiguity has been questioned for its limitation towards guarantee of freedom to religion, as guaranteed by the Article 18 of the International Covenant on Civil and Political Rights (ICCPR), 1966⁶ to which Nepal is a party, without any reservation. As part of Nepal's previous Universal Periodic Review (UPR) held on 4 November 2015, Nepal received a total of 195 recommendations, out of which "Nepal accepted 152 recommendations and took note of the rest."⁷ According to the previous UPR report, recommendations were made that Nepal "strike provisions that appear to curtail religious freedoms"⁸, and that Nepal "[e]liminate the prohibition of conversion to another religion, which undermines freedom of religion"⁹. However, while noting these recommendations, Nepal pushed back against the recommendations stating that Nepal's Constitution promulgated by the elected Constituent Assembly fully ensures religious freedom to all people, and prohibits discrimination of any forms on ground of religious faith and philosophy. Every person is free to choose, adopt, profess or practice religious belief.¹⁰ Nepal further stated: "However, proselytism by force or undue influence or inducement is prohibited. This does not undermine freedom of religion."¹¹ Rather than recognizing the significant problems that anti-conversion laws create and the burdens they place upon religious practitioners, since its previous UPR cycle, Nepal has instead reinforced its position by passing 'a law in 2017'¹² to codify the ban on religious conversion within the criminal code.

In addition to this, there are other instances where such ambiguity of the concept is evident. Article 18 (2&3) of the Constitution, on Right to Equality states- "*There shall be no discrimination in the application of general laws on the grounds of origin, religion, caste, tribe, sex...and such other grounds.*" Likewise, Article (26) guarantees every person the freedom to profess, practice, and preserve his/her

6 'This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.'

7 United Nations Human Rights Council. (2016). Report of the Human Rights Council on Its Thirty-First Session, A.HRC/31/2 at 114, July 22, 2016.

8 Human Rights Council. (2021). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A_HRC_WG.6_37_NPL_1)*. Retrieved from https://www.upr-info.org/sites/default/files/documents/2021-02/a_hrc_wg.6_37_npl_1_e.pdf.

9 ibid

10 ibid

11 ibid

12 National Penal Code, 2017, Clause 160 of section 9 states that: 1. Nobody should convert the religion of another person or indulge in such act or encourage such an act.

religion according to his/her faith. Furthermore, in Article 26(2), it further states, "Every religious denomination shall, maintaining its independent existence, have the right to manage and protect its religious places and religious trusts in accordance with law." However, the subsequent clause under Article 26 (3)¹³ paradoxically criminalizes the act of proselytizing, raising another question of violation of the freedoms ensured under international human rights law, which has been discussed above already. There are hundreds of persecution cases registered in the courts of law on charges of proselytization while several other hundreds are serving a jail sentence or have been fined on the same charges.

On the same note, Article 29 (2) on Rights against Exploitation¹⁴ and Article 50 (2) on the Directive Principles states¹⁵ have further affirmed non-discrimination on any grounds including religion. However, state's relationship with religion and its practices do not reconcile with the spirit infused in these provisions. This dualistic position of Nepal in relation to complying with the international human rights treaty law which it has been a party to without any reservation is another ambiguity in relation to secularism.

State Practices vis-à-vis Secularism

Funding to Religious Groups

Nepal's government funding to religious groups is also discriminatory. A recent controversial funding of 300 million Nepali rupees to Hindu's topmost shrine called Pashupatinath in order to install a gold receptacle (*jalahari*) to Lord Shiva's Jyotirlinga¹⁶ is a burning example to show how the State is proactively inclined to

- 13 (3) No person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardize other's religion and such act shall be punishable by law.
- 14 "No person shall be subjected to any kind of exploitation based on religion, custom, tradition, ritual, practices or any other bases."
- 15 " It shall be the socio-cultural objective of the State to build a civilized and egalitarian society by eliminating all forms of discrimination, oppression and injustice based on religion, culture, rituals, customs, traditional practices, or on any other grounds; develop socio-cultural values based on national pride, democracy, people orientation, respect of labor, entrepreneurship, discipline, dignity and tolerance, by respecting cultural diversity and maintaining communal harmony, solidarity and amity."
- 16 A 'jalahari' is a receptacle that covers the base of a shiva linga, and collects and drains liquid offerings like water and milk offered to the linga.

funding a majority religion. This decision of the government was challenged at the Supreme Court of Nepal stating that the decision to install new *jalahari* was against the Ancient Monuments Protection Act 2013, and the decision was unjustified even for economic reasons and the government had interfered in religious places despite Nepal being a secular nation.¹⁷ The court's decision is pending on this issue. However, this adequately indicates that questions about such secularly inconsistent practices of the government seem to be a routine phenomenon ahead. So far the inconsistency is concerned here for the purpose of this article, the State either has to ensure a fair treatment to all or as expected in a secular democracy, stay neutral because it is the authority of all citizens and for all citizens, and must therefore, in principle, treat everyone equally, without discriminating on the basis of religion, belief, or choice of a community or party. This puts a question before the secular government of Nepal whether a religious minority will ever receive such money from the government proactively.

State's Engagement in Religious Affairs

Another example about State's engagement in religious affairs is in the education sector. The government continues to permit religious groups to establish and operate their own schools- is a part of religious freedom. The question here is not about government's engagement as such but the differentiated treatment to other religious minorities such as Christian, Kirat, Bahai etc. For example, the Department of Education has prepared religious curricula for the registered Muslim Madarasas (schools) that are over 2000 in number.¹⁸ The government funds the salary of teacher(s) for each of these registered religious school or provides a lump sum amount through district offices. This again amounts to a preferential treatment and is discriminatory to marginal minorities, non-organised and non-believers, who even cannot come forward to access.

17 Writ filed in Supreme Court against a decision to install gold *jalahari* in Pashupatinath Temple. (2021, February 23). *Aawaaj News*. Retrieved from <https://aawaajnews.com/political-news-in-nepal/writ-filed-in-supreme-court-against-decision-to-install-gold-jalahari-in-pashupatinath-temple/>

18 Giri, A., & Ghimire, B. (n.d.). Province-2 introduces controversial bill to allow foreign funding for Muslim schools. *The Kathmandu Post*. Retrieved from <https://kathmandupost.com/national/2018/10/30/bill-floated-to-allow-foreign-funds-for-muslim-schools>

Perhaps this is because of the discriminatory treatment of the federal government, a Madhesh Provincial Government (then led by the Chief Minister from Muslim Community) introduced a Bill to allow foreign funding for Muslim schools in its jurisdiction. This endeavor of the provincial government was not only a move contrary to the constitutional requirement for the central government's consent for any kind of international funding, but also an indication of the defiance by a minority religion in the provinces. Such manifestation of defiance is a challenge underlying the secularism in Nepal. This competing unconstitutional move by the provincial government also constitutes a *quid pro quo* case, initiating tensions among the tiers of the governments along the religious line.

Treatment to Religious Organizations

The law does not provide for registration or official recognition of religious organizations as religious institutions, except for Buddhist monasteries. It is not mandatory for Buddhist monasteries to register with the government, although doing so is a prerequisite for receiving government funding for maintenance of facilities, skills training for monks, and study tours. Except for Buddhist monasteries, all religious groups must register as NGOs or nonprofit organizations to own land or other property, operate legally as institutions, or gain eligibility for public service-related government grants and partnerships. This again is a discriminatory treatment among the religions. While Hindu Temples and religious sites as well as Buddhist monasteries can be easily registered under laws, the rest of the religious minorities have to identify themselves as an NGO. This is in contravention of the assurances of freedom of religion made by the constitution. A recent case of reportedly camouflaged construction of a Church building just in front of a Hindu temple in Dharan has a similar story to tell. Examples show that the church facilities are established in a different pretexts in the beginning, perhaps to escape the legal necessity and social consent in a non-Christian set up.

Government Policies and Programs

Although on the larger picture, the State policies section of the Constitution stresses the non-discrimination on religious grounds, the Policies and Programs of the Governments introduced as a part of its annual budgetary priorities do not uphold

well the secular spirit of the Constitution. For example, Section 54 of the Policies and Programs of the year 2079/80 (2022/23) reads that 'collaboration among the three tiers of governments will be enhanced for the protection, development and promotion of religious and cultural sites mentioned in Vedic and Puranic texts.¹⁹ This again is problematic to just afford such treatment to the sites mentioned in Hindu scriptures because Vedas and Puranas are the mythological scriptures of Hindus. There is no mention of Islamic or other religious scriptures in relation to such assurances, hence creating a bias and inconsistency around secular behavior of the State.

Similarly, the government in recent years declared a large number of municipalities and most of them were named after Hindu deities. The ongoing protests in Koshi Province by indigenous nationalities also claim that 'Koshi' originates from a name of a 'Kaushik rishi', a saint from Hindu mythology. The protests in connection with renaming of the Koshi province have turned violent, claiming a life and wounding many others. The dust doesn't seem to have settled as yet because the indigenous nationality have made it an issue of identity, which has fundamental links with culture, history and religion. The state certainly has a responsibility to protect all religions equally, in a manner similar to that of a parent who treats all their children equally. Interestingly, in the name of recognition, the state, in recent times, has even started declaring public holidays for the major festivals of the country's myriad religious and cultural groups. This has increased the aspirations of many other minorities to become known nationally. Such engagement of the State may be viewed as biased by those left-out groups and it may be problematic in the days to come.

Judiciary on Religious Affairs and Secularism

The judiciary is not untouched by the discourse and disputes related to religion. There are multiple cases where the court has sought to define the concept of Nepal's secularism, including the protection of cow and bulls that are religiously sacred animals for Hindus. Therefore, these verdicts are interesting and subject to further scholastic inquiry in light of broader philosophy of democracy and secularism.

19 *Policies and Programs of Government of Nepal for the Fiscal Year 2079/80. (2023). Office of the Prime Minister and Council of Ministers, Government of Nepal. Retrieved from <https://www.opmcm.gov.np/en/download/policies-and-programs-of-the-government-of-nepal-2079-80/>*

Most of the Court verdicts seem to be defensive of and endorsing the state's seemingly non-secular activities. In a writ case(077-WO-0714) filed by *Subash Dakal v. Government of Nepal, Central Bureau of Statistics* in 2020 challenging the intent of the questionnaire made for the national census 2022, the petitioner argued that the questionnaire was ill-designed in a manner so as to show Hindu's population at a lower percentage and was therefore necessary to stop it. In response, the Supreme Court made a long interpretation of several religious issues and held that "*...the previous constitutions had also declared Nepal a Hindu State and that pronouncement did not threaten the multi-religious and multi-cultural identity of the nation and the current Constitution declaring the state as the secular alone does not impact or cannot be understood to cause to impact adversely to the religious and cultural configuration, position, and identity of the country. This should not be a reason for Hindu or any other denomination to feel insecure. Even if the constitution has declared Nepal secular, every denomination is guaranteed right to freedom of religion that includes right to operate, protect its religious sites and religious Guthi (trusts). Furthermore, the State has been entrusted upon with some religious obligations as well... Secularism does not mean that the State turns blind eye to religious matters. Instead, it means to protect the norms and traditions that have been in practice since Sanatan(time immemorial) and to prevent any suppression, prejudice, exclusion and proselytization. The very foundations of existence of denominations are safe and secured when their religion, culture and heritages are protected. It is within this protected culture, an individual or community(denomination) can grow healthily and lively, attain fulfillment, and develop personality in a free manner.*"²⁰

Judiciary on Cow Protection and Secularism/Religious Freedom

*Cow is considered to be a sacred and revered as 'mother' in Hindu religion.*²¹

It is to be noted that historically, many ethnic communities, including Dalits, in Nepal had beef-eating practice. But the killing of cows was outlawed nationwide

20 *Subash Dhakal v. Government of Nepal, Central Bureau of Statistics, Supreme Court Verdict no. 10723 (2077/12/08), Nepal Kanoon Patrika, 63(8)*. Retrieved from https://nkp.gov.np/full_detail/9782

21 Khanal, P. (2020, June 19). Food that Divides Us. *The Kathmandu Post*. Retrieved from <https://kathmandupost.com/food/2020/06/19/food-that-divides-us>

by the Hindu Shah king in 1805. The state sent out public notice all over the country stating that anyone who slaughters a cow will be given a death sentence and their property confiscated. The 1854 Muluki Ain reduced the capital punishment to life imprisonment for intentional killing and fine for negligent killing. Today, consuming beef is 'allowed' in the country, but slaughtering a cow is still proscribed, earlier as a sacred animal and now as a national animal. But because of centuries of state's systematic indoctrination, beef-eating is frowned upon, even within the communities that once practised eating beef. Some even exhibit their superiority to those who continued, often secretly, consuming the meat of cows that died naturally or by accident. Nepal's Judiciary has spoken in detail about 'Cow'.

The Court made a comprehensive explanation on secularism and protection of 'cow' in *Sneha's Care v. Prime Minister and Council of Ministers*' case (075-WO-0843).²²In this case, the petitioner argued that leaving the cows, calves, oxen, bullocks stray on the roads and not taking their proper care in terms of fodder, water and shelter was violation of the legal and constitutional protection accorded to them, hence the government be sanctioned for its inaction and non-compliance of the law. In response, the Supreme Court held that *Cow is not only constitutionally linked to the national identity but it is a unique symbol of our religion, culture, civilization and traditions. Cow protection therefore is a state responsibility.*

Likewise, the Special Bench of the Supreme Court in *Om Prakash Aryal v Government of Nepal (2063-WS-0033)*²³ case, the court declared the provision of cow slaughter as a subject of constitutional scrutiny on two grounds: (1) the article 7(2) of the Interim Constitution, 2007 that considers a cow a national animal; and (2) the cow is a sacred animal of Hindus.

In yet another case, in September 2014, the Bench of Justice Govinda Kumar Upadhyaya in the Supreme Court held that cow slaughter may damage the dignity of Hindus.

22 *Sneha's Care v. Prime Minister and Council of Ministers*, Supreme Court Verdict no. 10299 (2076/01/08), *Nepal Kanoon Patrika*, 61(6). Retrieved from https://nkp.gov.np/full_detail/9365

23 *Om Prakash Aryal vs. Government of Nepal*, Supreme Court Verdict no. 8009, *Nepal Kanoon Patrika*, 2065(9). Retrieved from https://nkp.gov.np/full_detail/2489/

While analyzing all these interpretations, the judiciary has laid equal emphasis on religious aspect of the Hindus. The court had enough legal grounds to rationalize the protection of cow as the Constitution itself has declared the cow as a national animal, and National Penal Code²⁴ has explicitly dedicated a section on it. However, the interpretations by the courts seem to be made the concept of sanctity and religiosity rather than legal-constitutional necessity. Courts choosing not to abstain from the religious biases is a risky proposition. It is notable that many persecutions have taken place on allegation of harvesting cow meat, storing beef at homes, or slaughtering it.

Mara Malagodi argues, 'to understand the symbolic significance of these constitutional provisions in the construction of the Nepali nation and their material impact on Nepal's marginalized groups, it is crucial to analyze their historical development and their relationship to other parts of the constitution and to ordinary laws criminalizing cow slaughter. He further argues that cow protection has come to signify a vision of state authority that privileges the symbols of the majority over the rights of the minority—a vision channeled through the coercive instrument of law'.²⁵

Socio-Political Challenges around Secularism

Emergence of Social Groups to Counter Secularism

Alongside the religious discourse in Nepal in last 10-15 years, a new phenomenon of forming national societies along the caste-lines has emerged. Hundreds of *samaj* (societies formed along religion and/or caste) in Nepal have been constituted during the time whose goal on the outset seems to unite for promoting the legacy of a particular clan but underneath the idea, it does not seem to be exclusively so. Of such social groups or associations, majority are Bramhins/Kshetris or *Khas Aryans*²⁶ who are considered to be the first two high castes in Hindu caste system. It

24 Chapter 27 of the Penal Code Act deals with offences relating to animals and birds. Killing or causing a grievous hurt to cow or ox is prohibited and subjected to a sentence of imprisonment for a term not exceeding three years for killing or a fine not exceeding fifty thousand for causing hurt.

25 Malagodi, M. (2021). Holy Cows and Constitutional Nationalism in Nepal. *Asian Ethnology*, 80(1), 93-120.

26 The *Khas* are descendents of the non-Vedic Aryans. These include the Bahuns (Brahmins) and the Chhettris (Kshatriyas or Warrior caste).

is notable that most of these associations were formed out of counter-consciousness to the identity politics of indigenous nationalities (who often tend to relate Hindu religion as a form of domination by Khas Aryans in the political and social sphere) during the constitution writing in Nepal and the narrative continues to be held in the same spirit. New virtual campaigns in the name of Mangol Organisation waging anti-hindu activities and indigenous communities' objection with the reportedly naming of Province one as a Koshi Province²⁷ have been the latest manifestation of such tensions and grievances along the religion. Some recent outcry among Hindu leaders and their counter response by other religious groups in social media caused a social distress. Subsequently, the fear escalated when a huge mass protest rallies by Hindus in Dharan (the eastern part of Nepal) sub-metro necessitating the imposition of a curfew by local administration signaled an alarming message. Sporadic though, some incidents of clashes in Madhesh and another communal incident of a scale in Nepalgunj in October 2023 cannot be viewed just in their individual nature. Religion has surprisingly grown to be a key fear-factor to spoil the social harmony. Religious intolerance seems to be on the rise and religion agenda has immense potential to be politicized.

Definition Paradox around Secularism

One of the reasons behind misunderstanding or skeptic views about secularism seems to be with constitution's failure to define the form to which Nepal has committed itself. Whereas anti-secularists have long been demanding the use of the term 'religious freedom' (dharmik swatantrata) over 'secularism' (dharma nirapekshyata), pro-secularists in Nepal on the other hand have found it difficult to reconcile the secularism with the constitution's conspicuous preference for Hinduism. The 2015 constitution states that Nepal is a 'secular' state before going on to clarify that secular refers to "religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial."

27 Indigenous nationalities claim that 'Koshi' Province is named after Hindu religious belief whereas the region has a distinctive identity of indigenous Kirat nationalities. Violent clashes ensued in the provincial headquarters of Koshi have left dozens wounded and a life killed already.

Lost in Translation

The Constitution has used Nepali word "Dharmanirapekshyata" for “secularism.” In fact, "dharma nirapekshata" carries a negative connotation. The term means “indifference” or “opposition” to religion – a phrase that could fit the French idea of secularism, calling for a complete separation of religion and state. However, the majority of Nepalese are religious, at least in their cultural manifestations, and are not keen to establish a state that is anti-religion as the Nepali equivalent word seems to imply. No country can remain indifferent to or opposed to religion. So, the wrong choice of Nepali equivalent word for 'secularism' has also added to already existing skeptic views and misunderstanding about it. In India, there was a huge debate around whether to keep the term 'secular' in its preamble. An agreement was forged after an ensuing discourse that the word would be retained. However, the final drafters did not keep the term. It was only after the 42nd amendment the term 'secular' made appearance in the preamble of the Indian constitution. It was a great wisdom on the part of the constitutional experts that they chose 'pantha nirapekshyata (way of life in religion)' in Hindi. Indian scholars did not use the term 'dharma nirapekshyata' for 'secularism' although they also had 'dharma' as a word in their language.

This misleading choice of word 'dharmanirapekshyata' (indifferent to religions) in Nepali language is also one of the inconsistencies around secularism in Nepal. It seems that the Supreme Court has spoken several times on religion related cases that dharmanirapekshyata (secularism) does not mean to be irreligious or indifferent to religion.²⁸ Another similar explanation on state-religion relationship is well maintained in the Supreme Court verdict (*Advocates for the Nation v. Prime Minister and Council of Ministers*), wherein it holds that '...state should maintain an equidistance and equal treatment to all religion, religious affairs or religious denominations.'²⁹

28 *Subash Dhakal v. Government of Nepal, Central Bureau of Statistics, Supreme Court Verdict no. 10723 (2077/12/08), Nepal Kanoon Patrika, 63(8)*. Retrieved from https://nkp.gov.np/full_detail/9782

29 *Advocates for the Nation v. Prime Minister and Council of Ministers, Supreme Court Verdict no. 9919 (2074/07/30), Nepal Kanoon Patrika, 59(12)*. Retrieved from https://nkp.gov.np/full_detail/8970

'Biased' Choice of Word

Another inconsistency regarding the terminological choice the Constitution has made is about the term 'Sanatan'. Linguistically, the term is a 'register', indicating a specialized vocabulary. In this sense, it denotes a very narrow and intimate meaning. The use of 'sanatan' in the Explanation Clause of the Article 4 of the Nepalese Constitution seems to signal its limited meaning in that it appears to refer to Hindu religion. By 'sanatan', non-hindus understand that the constitution intended to imply Hindu religion although it does not necessarily mean so. The term could have been defined to avoid its meaning in a narrow sense or the Constitution could have chosen another formulation simply to denote the long-existing religion from ancient times, if it had to use such word at all.

Socio-political Challenges around Secularism in Nepal

The adoption of secularism without much public discourse and clarity of conception has resulted in inconsistencies of various forms and scale. Such inconsistencies and anomalies are seen in social, and political sphere.

Resurgence of Counter-response to Secularism

Although, Nepal has been a secular nation since the promulgation of the Interim Constitution of Nepal, 2007, there have been contested opinions about it in the public domain ever since. The discourse got prominence during the second Constituent Assembly (CA) elections held in 2013 and the election results proved the compelling existence of counter-responses to secularism. A pro-Hindu/King political party (Rastriya Prajatantra Party-Nepal), whose presence in the first Constituent Assembly in 2008 was negligible(4 seats out of 601)- made a resurgence in the political sphere by using the slogan '*Ek vote dai lai, ek vote gai lai*' (one vote for elder brother; a colloquial term to refer to Nepali Congress leaders, and one vote for cow) during its electoral campaign to second Constituent Assembly (CA) and, to dismay of the progressive forces, it won 25 CA seats in the election securing six percent of total votes and making it the fourth largest party in the CA. A similar slogan was popular in the Southern Plains (Terai), where proponents of a Hindu state came up with the slogan, '*Ek vote gachhi lai, ek vote bachhi lai*' (One vote for tree, one vote for cow). The cow, a resonant

symbol for Hindus, is the election symbol of the Rastriya Prajatantra Party-Nepal (RPP-N) while tree is the symbol of the Nepali Congress (NC), a right wing leading political party. The above slogans illustrate how a political party played on religious sentiments to gain popular votes and that too, on the premises of secular nation, as proclaimed by the Constitution some 8 years ago. And RPP (formerly known as RPP-N), a pro-Hindu and pro-monarchy political party, continues to be the fourth largest party in the parliament even after 8 years of secularism in force. This implies that there is still a risk of getting a secularism reversal debate more prominent. This risk has its roots in the times when Nepal chose to adopt secularism. In fact, Nepal's primary concern during its constitutional debate was about accommodating various marginalized ethnicities. Religion agenda was relegated to the second-tier of political importance, receiving less attention until it finally came to the vote in the Constituent Assembly. Therefore, there could not be a public discourse about secularism. As a result, secularism is viewed so skeptically by majority Hindus and questioned for its allegiance to neutrality and/ or fair treatment to all religions by the religious minorities.

Public Opinions and Skepticism

While looking into political dimension of this debate, an analysis of the survey by Interdisciplinary Analyst Nepal (a Research Centre) shows that supporters of republicanism and federalism are more likely to support secularism, while supporters of a monarchy and a unitary state are more likely to support a Hindu state.³⁰ In this background, the Analyst concludes Nepal's disassociation from secularism may lead to a weakening of the country's other new structures — republicanism and federalism — which are pillars of an inclusive democracy.

However, another public opinion poll by Himal South Asia Magazine, conducted before promulgation of the new constitution, on various issues including the issue of Nepal's Hindu identity, nearly 52% people responded the reversal of Hindu state from secular was 'right'. Other 43.3% said it was 'wrong'. Among other fringe categories, around 4% respondents said 'don't know'.³¹

30 Sen, P. K. (2015). Should Nepal be a Hindu State or a Secular State? Himalaya, *The Journal of the Association for Himalayan Studies*, 35(1).

31 Himal Media. (2015). Himal Media Public Opinion Survey, 2015. *Nepali Times*, 147.

These both survey results suggest the divided mood of common people in contemporary Nepal. The minorities and some rights groups argue that religion is now being used as a tool to roll back on progressive changes. They claim that some forces are attempting to dilute federalism and weaken inclusion in the name of religion. They argue that right to religion should be taken as an exclusive private affair and there should be no hindrance to exercise any practice thereof. The underneath nuances of this view indicate that the conversion is an individual choice and not a matter of restriction. While on the other hand, the defenders of Hindu statehood posit that revoking Nepal's identity as a Hindu state was not a demand of the People's Movement in 2006³², but an agenda imposed by Western Christian countries. It is notable that the British ambassador to Nepal Andrew Sparkes, in 2014, sparked a storm of controversies during the constitution writing in Nepal. In his open letter to the Constituent Assembly members, he was accused of demanding right to conversion in the new statute. His comment came at a time when a considerable size of Nepali population was smoldering against the decision to turn the Hindu nation into a secular state in 2006. The British Embassy had to regret his controversial remark later.³³ The voices for reversal to Hindu identity with 'religious freedom for all' have not diminished yet. Political party like RPP is officially leading this agenda and there are other fringe political forces in place, posing a challenge to future of secularism in Nepal. A nationwide surge of people's protest led by Durga Prasain, a businessperson in eastern Nepal, which is what he calls a "great campaign to save the nation, nationality, religion, culture, and citizens of Nepal"- was another offshoot of such brewing up challenges.

Likewise, high level politicians are seen making public speeches about their doubts and disowning of secularism. Nepali Congress, a main leading right-wing party, had significant and influential leaders lobbying or speaking firmly against the secularism until recent years. It is a kind of public secret that even in left wing parties, there are leaders who do not subscribe to secular idea by heart. In an interesting anecdote in this regard was seen in June, 2023 when Central committee

32 People's Movement II (2006) is a second phase political movement after 1990, led by political parties of Nepal to restore democracy. It was with this movement, Nepal's monarchy was put to an end.

33 Subedi, R. R. (2015, July 5). Envoy Sparks Storm of Conversion Controversy. *The Rising Nepal*. Retrieved from <http://therisingnepal.org.np/news/568>

leader Ram Kumar Sharma including few other leaders of the CPN-Maoist Centre submitted a memorandum to their Chair Puspa Kamal Dahal(also sitting PM) demanding that the government hold a referendum to choose between establishing Nepal as a Hindu state and a secular one.³⁴ Leaving aside the hidden motif, if any, this loose standing within such a rebellious party in relation to constitutional choice sends a very crucial message as to how difficult the choice has been for a ultra-leftist party who once advocated and subscribed to French Model, which was evidently seen in PM Dahal's Priest removal case.³⁵

Conversion Narrative

The discourse surrounding secularism in Nepal seems much concerned about deciding whether religious freedom includes the right to proselytize. Conversion is viewed by many as an unnecessary and forceful action that weakens the Hindu way of life. Hindu leaders argue that secularism is just a tool to create conducive environment for proselytizing. They criticize missionaries for targeting Hindus and argue that Christians - having fallen out of favour in the West - are now seeking a 'safe haven' in the East. There is a fierce discussion over what constitutes 'forceful conversion'. It is notable that according to the Center for the Study of Global Christianity, Nepal is the fastest Christianity growing country in the world. In its report published in 2013, the Centre said that Nepal topped the list of 20 countries that have the highest percentage of Christianity Average Annual Growth Rate (AAGR).³⁶ Likewise, Centre for the Study of Global Christianity (CSGC), a US-based research group, listed Nepal as the Asian nation with the most accelerated rate of conversions in 2018. It says, at 10.93%, Nepal has the fastest average annual growth rate of Christian conversions in Asia.³⁷

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- 34 Bhattarai, K. D. (2023, June 12). Dahal's journey from Mahakaleshwar to Pashupatinath. *The Annapurna Express*. Retrieved from <https://theannapurnaexpress.com/news/dahals-journey-from-mahakaleshwar-to-pashupatinath-43669/>
- 35 In 2009, Maoist Chair and the then PM Pushpa Kamal Dahal had to withdraw government's decision to replace Indian Priests by Nepali ones at Pashupatinath temple due to pressure built up by mass protests.
- 36 Gordon-Conwell Theological Seminary. (n.d.). Research Resources. *Ockenga Institute*. Retrieved from <http://www.gordonconwell.edu/ockenga/research/index.cfm>
- 37 Gordon-Conwell Theological Seminary. (n.d.). Research Resources. *Ockenga Institute*. Center for the Study of Global Christianity. Retrieved from <http://www.gordonconwell.edu/ockenga/research/index.cfm>

Insufficient and misleading communication about secularism as to how it complements human rights and religious freedoms- seems to have been a cause of anxiety among majority Hindus. Leaving it undefined and leaving this vacuum in understanding unattended may offer a chance for politicization of the agenda for petty party interests. Such misconceptions and knowledge gap can deceptively and imperceptibly nurture apprehension, hostility and intolerance.

Geopolitical Consequences

After 10 years of post-conflict transition, two constituent assembly elections and devastating earthquakes killing over 9000 people, Nepal finally adopted a Constitution in September 2015. But India expressed its displeasure with this development. Such behaviour has both symbolic and strategic dimensions. For one thing, India felt that its suggestions to retain Hindu identity was not given a due consideration when Nepal made its momentous decision of declaring the only Hindu Kingdom to a secular nation. On the day Nepal celebrated the new constitution, India, angered and worried of her own weakening influence in the neighbourhood, merely 'took note of it'. This was a meaningful message of dissatisfaction in a rather subtle and diplomatic tone. Furthermore, India 'expressed concerns' over rising tensions in the Nepal's southern plains by Madheshis reportedly demanding the fair and equal treatment in the Constitution.³⁸

India perceives any change in Nepal's social political life is directly linked to its security. Nepal's choice of secularism is also largely said to be one of India's such worries. Manifestation of it was seen through India's 'unofficial blockade' to the land-locked Nepal, which halted all essential supplies including the petroleum for about four and half months. It was a stringent posture against a 'special' friendly nation because it created a humanitarian crisis in a background of fresh wounds of mega earthquake in Nepal. Unlike many prominent diplomatic scholars, a magazine named 'The Diplomat' wrote about this widespread perception about India's interference in Nepal, '...under Modi and the Bharatiya Janata Party (BJP), India has another reason to be unhappy with Nepal. For the Hindu-nationalist (BJP), Nepal's majority Hindu population is an important vehicle through which to expand political clout.

38 Khatlani, S. A. (2023, January 28). India-Nepal Constitution. *My Pluralist*. Retrieved from <https://mypluralist.com/2023/01/28/india-nepal-constitution/>

Modi himself and his party leaders have invoked religious narratives on several occasions to redefine the Nepal-India relationship. Yet regardless of the country's overwhelming Hindu majority, Nepal's political parties have adopted secularism, clearly delinking the state from any particular religion.³⁹

Nepalese perception about India's engagement in Nepal's internal affairs has been bitter at times. There is a mass perception that India appears to treat Nepal as its 'protectorate' and does not treat on the basis of sovereign equality, especially when it comes to critical issues such as governmental change, foreign aid, territorial integrity, policies and development projects. In this backdrop, it will not be exaggeration to say that implementation of secularism in its full spirit is still a challenging task. Secularism, given the emerging unhappiness at home and in the neighborhood, has turned out to be a double-edged sword for Nepal.

Lack of education on religious studies and inter-faith dialogue

There is a stark deficit of understanding and academic discussion on secularism and religious studies. Untrained in religious studies, the public schools are way too far to learn on teaching religion, teaching about religion and teaching from religion in a secular context. The universities do not have any departments dedicated to religious studies. All this gap has presumably contributed to mislead the secularism discourse in Nepal.

Conclusion and ways forward

Whatever the result and fate may be, Nepal has already adopted secularism through new constitution. Now there is no way but to move forward and work on optimistic note. For this, religions have a major responsibility in creating a culture of toleration while also acknowledging competing claims of their own. They will have to stop being passive bystanders (not doing anything in the name of neutrality) and organize themselves to provide more effective peace services. In this regard, religions and religious organizations have an untapped and under-used integrative power potential to seek the common grounds, building trust and cooperation among one another.

39 Ojha, Hemanta. (2015, November). The India-Nepal Crisis. *The Diplomat*. Retrieved from <http://thediplomat.com/2015/11/the-india-nepal-crisis/>

Besides, state must work on adding clarity in legal- constitutional provisions and ensuring their communication across the inter-sections of the societies. In order to tackle the emerging challenges and inconsistencies around secularism in Nepal, stakeholders should take multi-pronged initiatives for making inter-party collaborative works, strengthening inter-faith dialogues, and launching programmes for media, CSOs, judiciary and academia to help them understand the religious freedom and secularism better. Inaction to this end may pose threat to societal peace among various religious groups in future.

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