

The Right Honourable Mr Sushil Koirala
Office of the Prime Minister and Council of Ministers
Singh Durbar
Kathmandu, Nepal
P.O. Box: 23312



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

SENT BY EMAIL AND POST

London, 6 November 2014

Your Excellency,

RE: Dr Chandra Kant Raut charged with sedition

I am writing on behalf of the Bar Human Rights Committee of England and Wales (BHRC). The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. The Committee is also concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The BHRC is contacting you regarding the arrest and prosecution of Madhesi activist Chandra Kant Raut. As you will be aware, on 14 September 2014, Dr Raut was placed under detention for allegedly inciting separatism in the Madhes region of Nepal under S. 2(1)(k) of the *Some Public (Crime and Punishment) Act, 2027* (1970).¹ Then, on 8 October 2014, Dr Raut was charged with subversion contrary to S. 3(1) of the *Crime against State and Punishment Act, 2046* (1989) for allegedly inciting separatism in the Madhes region of Nepal, an offence that carries a sentence of life imprisonment.²

Of note, on 20 September 2014, Dr Raut began a hunger strike to protest his arrest for denouncing discrimination of marginalised groups and peacefully demanding autonomy for his region. On 1 October 2014, as Dr Raut's condition became critical, he was visited in hospital by Nepali Congress Party leader and Minister of Information and Communication Minendra Rijal and Communist Party of Nepal (United Marxist-Leninist) leader and Minister of Agriculture Hari Prasad Parajuli. The two Ministers pleaded with Dr Raut to break his fast and gave a written commitment to respect Dr Raut's freedom of expression. On that occasion, the Vice-President of the Nepali Congress Party Ram Chandra Poudel also visited Dr Raut and made an oral commitment that the charges would not be proceeded with against him.

However, the following week Dr Raut was charged with sedition under the *Crime against State and Punishment Act, 2046* (1989). On 15 October 2014, the Special Court granted bail, but Dr Raut refused release on bail as he considered that he would be rearrested immediately on a different charge; the prosecution had stated in court that there was enough evidence to charge Dr Raut with the offence of

¹ S.2 – Prohibition to commit some public crime (1) No person shall commit any of the following acts:

(k) To commit any act or express anything, which causes intimidation or terror in general public and breaks public peace, by entering or not entering in any public gathering, assembly or demonstration; or to show weapon.

See: http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=25&func=startdown&id=611&lang=en

² S.3 (1) – If someone causes or attempts to cause any disorder with an intention to jeopardize the sovereignty, integrity or national unity of Nepal, he/she shall be liable for life imprisonment.

See: http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=25&func=fileinfo&id=712&lang=en

cybercrime for posting political material on his website, and the reportedly outstanding case under the *Some Public (Crime and Punishment) Act, 2027 (1970)*.

The BHRC respectfully draws to the attention of the Government of Nepal Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal has been a party since 1991, and Article 19 of the Universal Declaration of Human Rights (UDHR), which enshrine the right to freedom of expression. Nepal has also ratified the First Optional Protocol of the ICCPR. Nepal's commitment to human rights and the right to freedom of expression are also reflected in Article 12 (3)(a) of the currently in force Interim Constitution 2007.

Limitations to the right to freedom of expression are legitimate only if they fall within the very narrow conditions defined in the three-part test in Article 19(3) of the ICCPR; these restrictions must be 'provided by law and necessary', and there must be a legitimate aim to impose such restrictions. Similarly, Article 12 of Nepal's Interim Constitution 2007 allows only for the imposition of 'reasonable restrictions' to the right to freedom of expression. The BHRC respectfully submits that the restrictions to Dr Raut's freedom of expression do not pass the three-part test in Article 19(3) of the ICCPR.

First, the formulation of the offence under S. 3(1) of the *Crime against State and Punishment Act, 2046 (1989)*, with which Dr Raut is charged, does not meet the required standards of clarity and precision, leaving it open to abuse and political expediency.

Second, the current position in international law regarding the balance between national security and expression is that it is illegitimate to criminalise simple speech when no imminent violence is being incited with intent, as in the case of Dr Raut.

Third, limitations to freedom of expression are such as are necessary in a democratic society. The purpose must never be to shield governments from peaceful opposition. In this respect, the *Crime against State and Punishment Act, 2046 (1989)* is a piece of legislation drafted at the twilight of the Panchayat autocracy (1960-1990). This piece of legislation was enacted to repress dissent and curb the efforts of pro-democracy activists, and as such it has no place in a democracy.

The BHRC therefore respectfully requests the Government of Nepal and appropriate institutions to call to account the current actions that have led to Dr. Raut's loss of liberty with a view to securing his release without fear of further arrests. Further, it should reconsider the appropriateness of the Crime against State and Punishment Act 2046 (1989). The BHRC calls upon the authorities to ensure the internationally protected right to freedom of expression to all Nepali citizens in order to preserve the rule of law and administration of justice in Nepal. This is particularly important at this delicate moment of negotiations over the new constitutional settlement.

Yours sincerely,



Kirsty Brimelow QC

Chair, Bar Human Rights Committee of England and Wales (BHRC)

Cc : Embassy of Nepal in the UK

Cc : British Embassy in Nepal