

Nepal

Country Conditions Report

Created by the Sexual Orientation and Gender Identity Working Group

International Human Rights Program

University of Toronto

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# Introduction

This Country Report on the conditions faced by LGBTQI+ persons in Nepal is intended to provide a comprehensive and up-to-date survey of relevant legislation, case law, scholarship, and documentation from governmental agencies, non-governmental agencies, and the media. Due to language and translation-related issues, however, it is necessarily limited to material available in English.

Nepal is in a state of legislative transition for LGBTQI+ rights. While some rights have been recognised, other protections remain underdeveloped. Nepal’s Constitution does not explicitly guarantee equality rights for LGBTQI+ persons, however, the Supreme Court of Nepal has read all protections for minorities to include them as well. Although not explicitly given equality rights, the Constitution does provide that special provisions may be made for their protection and economic empowerment. One such provision is the guarantee of right to State employment. There has also been a concentrated effort to repeal laws that enable LGBTQI+ discrimination. While there have been significant developments in the constitutional recognition of LGBTQI+ persons, much of Nepal’s legislation has neglected them as a group. Examples of this include Nepal’s continued failure to recognise same-sex marriages, and their Criminal Code, which does not recognise same-sex rape as a crime.

Despite Nepal being progressive in its legislation related to LGBTQI+ rights compared to the rest of South Asia, non-governmental organizations and activists have made it clear that these political advances have not necessarily translated into changes in the larger society. LGBTQI+ individuals in Nepal still experience significant discrimination and violence in all aspects of their lives, most notably in employment and healthcare.

A significant problem faced in conceptualizing LGBTQI+ issues in Nepal is the presence of unique third gender and alternative gender presentations. In Nepal there is no notion of transgender or other Western gender identities. Instead, individuals identify with traditional Indigenous conceptualizations of gender that are often applied without a clear common identity. Meti/Meta is the most used gender identity, but individuals apply it in divergent ways to their own gender presentation or even sexual orientation. In conflicting scholarship, it is used by individuals to describe their gender preference in a partner or their own gender. Attempts to impose Western notions of transgender or non-binary are viewed as imperialistic and ignore the historical roots of diverse gender identities in Nepal. However, the lack of consensus on the definition of uniquely Nepali identities makes them difficult to study and presents problems for advocacy and protection.

# Legislation

Research Note:

* **Nepal’s legislation can be accessed on the official government website:** [**http://www.lawcommission.gov.np/**](http://www.lawcommission.gov.np/)
* **To access the original Nepali text of the current 2015 constitution, visit:** [**https://lawcommission.gov.np/np/wp-content/uploads/2021/01/नेपालको-स%E2%80%8Cंविधान.pdf**](https://lawcommission.gov.np/np/wp-content/uploads/2021/01/%E0%A4%A8%E0%A5%87%E0%A4%AA%E0%A4%BE%E0%A4%B2%E0%A4%95%E0%A5%8B-%E0%A4%B8%E2%80%8C%E0%A4%82%E0%A4%B5%E0%A4%BF%E0%A4%A7%E0%A4%BE%E0%A4%A8.pdf)
* **To access an English translation of the current 2015 constitution:**
	+ **Official:**[**https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf**](https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf)
	+ **Unofficial with easy navigation:** [**https://www.constituteproject.org/constitution/Nepal\_2015.pdf**](https://www.constituteproject.org/constitution/Nepal_2015.pdf)

1. *Nepal Constitution (2015).*[[1]](#footnote-1)

* **“There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology or any other such grounds.”**

While there are no specific provisions detailing equality rights for sexual minorities or those living in same-sex relationships, that protection has been read into the above provision of the Constitution by the Supreme Court.[[2]](#footnote-2)

2. *Nepal Constitution (2015).*[[3]](#footnote-3)

* **The State shall not discriminate among citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language or geographical region, ideology, and such other matters.**
* **Provided that nothing shall be deemed to bar the making of special provisions by law for the protection, empowerment or advancement of the women lagging behind socially and culturally, Dalits, Adibasi, Madhesi, Tharus, Muslims, oppressed class, backward communities, minorities, marginalized groups, peasants, laborers, youths, children, senior citizens, sexual minorities, persons with disability, pregnant, incapacitated and the helpless persons, and of the citizens who belong to backward regions and financially deprived citizens including the Khas Arya.**

The Constitution permits special provisions by law for the protection, empowerment or advancement of sexual minorities and other marginalized groups.

3. *Nepal Constitution (2015).*[[4]](#footnote-4)

* **Socially backward women, Dalits, Adibasi, Janajati, Adibasi Janajati, Madhesi, Tharu, minority groups, persons with disability, marginalized groups, Muslim, backward classes, gender and sexual minority groups, youths, peasants, laborers, the oppressed and the citizens of backward regions, and economically poor Khas Arya shall have the right to employment in state structures on the basis of the principle of inclusion.**
* **The Constitution guarantees the right to employment in State structures for sexual minority groups.**

4. *Nepal Constitution (2015).*[[5]](#footnote-5)

* **It shall be the duty of the National Human Rights Commission to ensure the respect, protection and promotion of human rights and their effective implementation.**

The constitutional provision relating to the National Human Rights Commission enshrined a previous statute, the *Human Rights Commission Act (1997),* into Nepal’s constitution. The duties of the Commission are extremely broad and are thought to encompass all grounds of discrimination not explicitly mentioned in the Constitution, including sexual orientation and gender identity. Areas of concern are not outlined in the provision, and it gives a wide range of powers relating to the investigation and creation of recommendations related to human rights violations.

5. *Marriage Registration Act 2028 (1971).*[[6]](#footnote-6)

* **“The male and female, who are interested to conclude a marriage under this Act, shall submit an application at least fifteen days earlier, in a prescribed format before the Marriage Registration Office.”**

There are no laws protecting same-sex marriage in Nepal, nor is there legal recognition for the practice. There have been marriage ceremonies performed between same-sex couples as well as ceremonies performed for those who identify as neither male nor female, however, these marriages are not officially legally recognised. During the creation of the 2015 constitution, the inclusion of a protection for same-sex marriage was hotly debated but it ultimately was not included. Since 2017, the government has claimed to be working toward the legalisation of same-sex marriage but there have been no updates since. In 2020, the National Human Rights Commission recommended that the government legalize same-sex marriage.

6. *The National Penal (Code) Act (2017)[[7]](#footnote-7)*

* **“Where a man has sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent, the man shall be considered to commit rape on such woman, or girl child.”**

The Criminal Code provision related to rape provides no recognition for same-sex rape survivors or for gender minority survivors. It only recognizes male against female rape.

# Canadian Jurisprudence

***Immigration and Refugee Board of Canada Decisions***

1. *Gurung v Canada*, 2015 CarswellNat 8001 (WL Can), 2015 CanLII 91153 (CA IRB)[[8]](#footnote-8)

**Holding:** Set aside an officer’s decision to refuse a permanent resident visa and held that the relationship between appellant and applicant was indeed genuine.

* **Canadian Immigration Officer in New Delhi determined that the conjugal partner relationship between appellant and applicant was not genuine.**
* **IRB found appellant and applicant to be credible and trustworthy based on their testimonies about their relationship.**
* **Couple testified consistently about their future plans in Canada together.**
* **Couple never had a joint bank account or other assets, which are markers of a conjugal relationship, but court held that this is reasonable since same-sex marriage is not currently legal in Nepal and a marriage certificate was required to open a joint bank account.**
* **Held that the appellant has met the burden of proof imposed upon her and appeal is allowed.**
1. *Schatens v. Canada* (Minister of Citizenship and Immigration), [2005] I.A.D.D. No. 330.

**Holding:** Claim denied.

* **This is the only reported Canadian case that could be found of a Nepali claimant claiming on the basis of sexual orientation.**
* **Schatens appealed the earlier decision of the Board to reject a claim for permanent residence status to Rabindra Kumar YADAV, whom he claimed was his conjugal partner.**
* **At issue in this case was whether section 4 of the Regulations applied and thereby excluded the applicant from consideration as the appellant's conjugal partner and thereby as a member of the appellant's family class.**
* **The appeal was dismissed on the basis that it was not proven on a balance of probabilities that the two men were in a properly reciprocal conjugal relationship.**

Though the claim was denied, it was decided on the basis of the quality of the appellant’s relationship with the applicant. It was not denied on the basis of conditions faced by LGBT persons in Nepal. At paragraph 8, the IRB Appeal Panel states, “As same sex relationships are not allowed in Nepal, they were and continue to be very secretive about their relationship. The applicant's parents, relatives and friends think of the appellant as a family friend and are not aware that the relationship is also sexual. The appellant is cautious about letting others know about the relationship because of work related concerns.”

**Note:** Nepal decriminalized homosexuality in 2007, so this case may be outdated (it was decided in 2005). However, it still goes to show the culture and attitudes of the country and can perhaps be used as a precedent in that way.

1. *E.Y.W. (Re)* [2000] C.R.D.D. No. 116. (Indian Claimant)

**Holding:** Claim allowed*.*

* **This case may be of interest because India is also a dominantly Hindu country and is arguably comparable to Nepal to some extent, perhaps even with respect to attitudes towards homosexuality.**
* **At para. 33 the panel found that “it is patently obvious [that India] has denied the fundamental human rights of sexual minorities in a blatantly discriminatory way” and that the fear of the applicant is well-founded.**

The applicant in this case was seeking refugee status in Canada as a result of his fear of persecution in India due to his homosexuality. At issue in this case was whether the claimant had a well-founded fear of persecution should he return to India.

# Nepalese Jurisprudence

***Constitutional Law Jurisprudence***

1. *Sunil Babu Pant and Other v Nepal Government. [[9]](#footnote-9)*

**Holding:** Extended Constitutional protection to LGBTQI+ people. Specifically, that gender identity and sexual orientation are private matters falling within each citizen’s right to privacy.

* **All fundamental rights in Nepal extend to LGBTQI+ citizens.**
* **A right to be free from discrimination already existed in the Interim Constitution, it must be amended to explicitly include SOGI.**
* **Included a directive to amend all discriminatory laws against LGBTQI+ peoples.**
* **The decision accepts that SOGI is not genetic but established through a person’s life not due to perversion or a psychological disorder.**
* **Recognizes a third gender and that it must be incorporated in an equal way into identity documents.**

This decision is hailed as the landmark case of SOGI rights in Nepal. Establishing it to be the foremost progressive nation in the region as far as the recognition of the rights of LGBTQI+ peoples. The Supreme Court of Nepal’s ruling firmly cements the protection of SOGI rights within the Constitution and provides legal recognition of and avenues to obtain legal ID relating to a third gender.

# International Law

While Nepal has been the subject of several United Nations reports by the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee Against Torture, and the Universal Periodic Review by the Human Rights Council, these reports have consistently given LGBTQI+ issues less attention than they deserve. This is likely due to the reports being made while in Nepal’s constitutional transition phase in 2010-2015; many make no reference to LGBTQI+ persons.

***UN Treaties***

|  |  |  |
| --- | --- | --- |
| **Treaty** | **Date of Signature** | **Date of Ratification** |
| ***ICCPR*** | **14 May 1991** | **14 August 1991** |
| ***ICCPR – First OP*** | **14 May 1991** | **14 August 1991** |
| ***ICCPR – Second OP*** | **N/A** | **4 March 1998** |
| ***ICESCR*** | **14 May 1991** | **14 August 1991** |
| ***ICESR – First OP*** | **Not Ratified** |
| ***CAT*** | **14 May 1991** | **14 August 1991** |
| ***CAT – First OP*** | **Not Ratified** |

***Human Rights Committee***

1. Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant.[[10]](#footnote-10)
* **“Various national human rights institutions have been established by statutes or executive instruments to give effect to ICCPR and other relevant international instruments. The NHRC was established in 2000 as an independent statutory body. Its enabling legislation is the Human Rights Commission Act, 1997. The main function of the NHRC is to ensure respect for, protection and promotion of, and effective implementation of, human rights. To this end, it can exercise a wide array of investigatory, supervisory, directive, and recommendatory powers. Importantly, it can record any official or body defying its recommendation or direction as a violator of human rights and issue an order for the provision of compensation to the victims.”**
* **“The International Relations and Human Rights Committee of the Legislative- Parliament may give necessary direction and suggestion to the GON. It evaluates and monitors governmental activities on human rights. It considers and deliberates on annual reports of the NHRC and the Attorney General, and reports to the House of Legislature- Parliament. Such reports indicate whether desirable progress has been made, whether violators of human rights have been brought to justice, whether status of implementation of human rights treaties joined by Nepal is satisfactory and what sorts of policies need to be implemented in this field.”**
* **“Article 14 of the Interim Constitution explicitly prohibits discrimination of any kind on the basis of caste, sex, tribe, social origin, language, religion and so on. In pursuance of this provision, human rights policies adopted by the GON have been profoundly directed and devised towards, inter alia, the elimination of discrimination, untouchability, exploitation, and violence based on caste, ethnicity, gender, region, language, or religion; protection and promotion of political, economic, social, and cultural rights of all peoples; and ensuring basic human rights of the marginalized or vulnerable groups or communities.”**
* **“Nepal has adopted a range of legislative, executive, and judicial measures to give effect to the right to equality. Article 13 of the Constitution has provided the right to equality as a fundamental right. All citizens are equal before law and entitled to have equal protection of law. No discrimination between or against any citizen on any ground is allowed.”**

***Committee on Economic, Social and Cultural Rights***

1. Concluding observations on the 3rd periodic report of Nepal: Committee on Economic, Social and Cultural Rights. [[11]](#footnote-11)
* **“The Committee is concerned that the National Human Rights Commission Act of 2012 contains restrictions and limitations to the independence, mandate, and powers of the National Human Rights Commission. The Committee is also concerned at the lack of financial independence of the Commission and of the power to recruit its own staff.”**

***Committee Against Torture***

1. Report on Nepal / adopted by the Committee against Torture under article 20 of the Convention at its 46th session.[[12]](#footnote-12)
* **“According to the 2009 OHCHR report, during the period under review OHCHR Nepal documented 93 cases of torture and ill-treatment, as well as a number of cases of unlawful detention. Generally, allegations of illegal detention, ill-treatment, torture, and other related violations were made against the Nepal Police (NP) and forest officials. Allegations against members of the Armed Police Force (APF) and the Nepal Army (NA) mostly involved claims of excessive use of force occasionally amounting to extrajudicial killings in controlling law and order situations and alleged poaching in national parks respectively.”**
* **“The 2009 report of the United Nations High Commissioner for Human Rights on the human rights situation in Nepal13 states that reports of ill-treatment sometimes amounting to torture were widespread, especially during interrogation.”**
* **“In May 2011, AF and REDRESS indicated that while the rate of reported torture in Nepal has gradually declined since 2001, there has been an apparent reversal in this trend from 2009 and more importantly in the period of July to December 2010.32 During the period from January to December 2009, around 20 per cent of detainees interviewed reported torture, and during the period January–December 2010, this number remained largely consistent, with 19.3 per cent of 4,198 detainees interviewed alleging torture.”**

***Universal Periodic Review by the Human Rights Council***

1. Universal Periodic Review – Third Cycle. “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21.[[13]](#footnote-13)
* **“In order to address the issue of overcrowding in prisons, new prison infrastructures are being built in various districts with the provision of separate blocks or rooms for men, women, PWDs and LGBT identities with required facilities.”**
* **“Nepal has an independent and impartial National Human Rights Commission established in compliance with the Paris Principles and accredited 'A' category status by GANHRI. The National Human Rights Commission (First Amendment) Bill, 2019 is under consideration of the Federal Parliament for aligning it with the elevated status of the NHRC as per the Constitution. The Government of Nepal remains committed to implementing the recommendations of the NHRC.”**
1. Universal Periodic Review – Second Cycle. “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21.[[14]](#footnote-14)
* **“As per the Supreme Court’s order, the members of the LGBTI community have been receiving citizenship certificate and passport with their identity as per the amended citizenship rules, 2008, and Passport Rules, 2010.”**
* **“The Central Bureau of Statistics officially recognized a third gender in addition to male and female for the first time in national census, 2011. The Government of Nepal has been considering the report submitted by a Committee constituted as per the directive order of the Supreme Court for further identification and protection of the rights of the LGBTI.”**
* **“The domestic legislation of Nepal prohibits discrimination of any kind including on the ground of sexual orientation and identity. The Government of Nepal respects the rights and freedom of the LGBTI community guaranteed by the Constitution and laws and is fully committed to ending de-facto discrimination against LGBTI community.”**

***Special Procedures of the Human Rights Council***

1. Visit to Nepal - Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter.[[15]](#footnote-15)
* **“Nepal has one of the most progressive constitutions in the world. In addition to listing many economic and social rights and the rights of specific groups, it includes the right to social justice, stating that several marginalized groups have the right to “participate in the State bodies on the basis of inclusive principle”. These groups are identified as “the socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya.”**

# Government Reports

***United States of America***

1. U.S. Department of State, *2021 Country Reports on Human Rights Practices: Nepal* (12 April 2021).[[16]](#footnote-16)
* **LGBTQI+ rights groups report that sexual and gender minorities face harassment from the police**
* **References the January 21st interaction between the police and 16 persons of third gender (see media reports)**
* **Same sex sexuality is decriminalized and protected in the Constitution, but actual protection is often lacking.**
* **Gender affirming surgery or recognition of the Nepal Medical Council is required to change gender markers on identity documents.**

***Australia***

1. Department of Foreign Affairs and Trade, *DFAT Country Information Report Nepal* (1 March 2019).[[17]](#footnote-17)
* **Nepal is one of very few countries to have extended Constitutionally protected rights to sexual and gender minorities.**
* **LGBTQI+ NGO’s in Nepal report discrimination in accessing government services and police protection from violence.**
* **The government has yet to implement the Supreme Court decision from 2007/08 to abolish discriminatory laws.**
* **The first third-gender passport was issued in 2017.**
* **General social attitudes toward same-sex relationships remain negative.**

***United Nations Development Programme***

1. UNDP, *Being LGBT in Asia: Nepal Country Report* (2014).[[18]](#footnote-18)
* **Hindu and Buddhist religious majorities are not seen as overly discriminatory in their beliefs.**
* **There are no anti-discrimination laws covering employment, this results in individuals hiding their identity or if they are unable to experiences of discrimination in the work sphere.**
* **They are difficulties in obtaining documents in a preferred gender, and discrimination when those documents do not match the presenting gender.**
* **Organizations supporting LGBTQI+ peoples, especially outside of Kathmandu face significant operational problems and often fail to meet any of the needs of people outside the main urban areas in Nepal.**
* **Implementation and timely revision of the law is a generally occurring issue in Nepal.**

# Reports from International Agencies and Non-Gov. Organizations

***Astraea Lesbian Foundation for Justice***

1. “Nepal LGBTQII Landscape Analysis of Political, Economic, and Social Conditions,” April 2022.[[19]](#footnote-19)
* **LGBTQI+ communities in Nepal still contend with deeply patriarchal systems, unequal treatment before the law, violence, and discrimination.**
* **Grassroots activists note that Nepal cannot rest on the praise from the international community that it is a “bastion of progress” on LGBTQI+ rights when it still has a long way to go in achieving progress.**
* **Nepal’s Civil Code does not recognize same sex marriage.**
* **Current laws are not comprehensive enough to guarantee equal rights.**
* **The stigma and discrimination faced by LGBTQI+ individuals may be exacerbated by their respective class, caste or because they are Indigenous.**
* **LGBTQI+ people report being discriminated against at healthcare facilities and encountering barriers in accessing care.**
* **Workplace harassment and discrimination are widespread for openly LGBTQI+ individuals and they face difficulty in securing employment.**
* **Due to this workplace discrimination and lack of employment opportunities, sex work is often the only viable source of income for some LGBTQI+ people, especially trans individuals.**
	+ **Because sex work is illegal in Nepal, sex workers are exposed to threats, harassment, police brutality and other health and safety risks.**
* **COVID-19 pandemic has especially impacted LGBTQI+ individuals because Nepal’s economy has suffered due to the pandemic and those who were hit the hardest have been people in informal labor sectors, which is where many LGBTQI+ people work.**

***United Nations Development Programme (UNDP)***

1. "Being LGBT in Asia: Nepal Country Report,” 2014.[[20]](#footnote-20)
* **Political advances have not necessarily translated into the daily lives of LGBTQI+ individuals who experience discrimination and violence in all aspects of their lives, including employment, family, health care, and education.**
* **There is an omission of LGBTQI+ individuals from laws such as sexual assault laws.**
* **Family pressure and social expectations still force most people into not coming out and into getting married against their will.**
* **More than 80% of Nepal’s population practices Hinduism and more than 10% follow Buddhism, both of which are not overtly homophobic – so, it is perceived that religion does not contribute strongly to discrimination against LGBTQI+ individuals, but it may still influence social traditions.**
* **There is a need for training and anti-discrimination laws for teachers and staff in schools to ensure the physical safety and mental well-being of LGBTQI+ youth.**
* **Nepal does not have anti-discrimination laws to cover employment.**
* **Many LGBTQI+ people report sexual harassment and discrimination during recruitment and employment.**
* **LGBTQI+ are unable to get married, to have their relationships recognized, and to adopt children.**
* **Lesbian couples are denied access to in vitro fertilization (IVF)**
* **Access to healthcare is particularly problematic for transgender individuals.**
1. “Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach,” 2014.[[21]](#footnote-21)
* **This study presents findings from a survey of nearly 1,200 sexual and gender minority adults in Nepal.**
* **LGBTQI+ people in Nepal continue to face a wide range of challenges, including bullying in schools and a lack of protection from discrimination.**
* **60% of respondents reported experiencing at least one incident of abuse or discrimination at some point in their lives.**
* **Over one-third reported discrimination or abuse in three or more public settings**
* **23% of respondents reported being denied services or treatment by a hospital or health clinic.**
* **Over 50% reported that their income was not adequate to meet their personal needs.**
* **Those who identified as being third gender were the most likely to experience discrimination, harassment, and violence.**
* **Experiences with law enforcement had high reports of physical abuse.**
* **One-third of HIV-positive respondents reported HIV discrimination by health care providers and almost 1 in 6 HIV-positive respondents reported physical abuse by law enforcement.**

# Media Reports and Local Expertise

1. “Nepal Stalls on LGBT Rights Despite Early Strides,” Agence France-Presse, Voice of America, November 30, 2018.[[22]](#footnote-22)
* **Despite being the first country in conservative South Asia to recognize a third gender and assure equality for sexual minorities, LGBTQI+ Nepalis still face obstacles to jobs and schools, and marriage equality is not in the near future.**
* **LGBTQI+ activists in Nepal said that although the government has recognized their identity, they have not put forward a concrete plan to give them equal rights.**
* **In August 2018, Nepal adopted a new civil code that defines marriage as between a man and a woman, which indicates that legalizing same-sex marriages will not happen anytime soon.**
* **Rukshana Kapali, a transgender woman, has been allowed to study at university, but not formally registered as a student because her high school transcript identifies her as a man; this means that she may not be able to graduate.**
1. “At Nepal’s Pride Parade, A Unique Vision of Queer Resistance,” Liam Hess, Vogue, June 14, 2022.[[23]](#footnote-23)
* **Although Nepal is known for being progressive with LGBTQI+ rights in South Asia, Nepali activists emphasize that there is still a long way to go.**
* **New constitution from 2008 does recognize LGBTQI+ rights as fundamental human rights, but same-sex marriage is still not legal, and there are discriminatory laws around access to property and education.**
1. “Violence against LGBTQII+ people continue in Nepal,” Bharat Dogra, Asia News Network, September 16, 2022.[[24]](#footnote-24)
* **Two members of the LGBTQI+ community, Munni and Chanda, were physically abused by locals who accused them of stealing babies.**
* **Blue Diamond Society, Nepal’s oldest LGBTQI+ rights organization, said that this incident was a hate crime since the perpetrators had no proof of Munni and Chanda stealing babies and found it easier to accuse them of being thieves because they are queer.**
* **This follows other recent hate crimes against the LGBTQI+ community.**
1. “Nepal might have made progress when it comes to queer rights, but it still has a long way to go,” May 17, 2020.[[25]](#footnote-25)
* **Although Nepal has a number of progressive laws related to LGBTQI+ rights compared to the rest of South Asia, these laws have not translated into changes in the larger society, which remains highly conservative.**
* **LGBTQI+ community members still find it difficult to receive equal treatment from the law.**
* **According to a queer rights activist, “the conversation regarding queer rights has not gone beyond the 2007 verdict” and LGBTQI+ community members are still treated like third-class citizens.**
* **Members of the LGBTQI+ community are still denied equal rights to marriage, property rights and education.**
* **They also continue to face constant harassment and attacks, some leading to murder.**
* **Many LGBTQI+ individuals still find it difficult to get jobs, leading them to resort to sex work.**
* **LGBTQI+ sex workers are doubly at risk of physical and sexual assault.**
* **Nepal’s rape laws describe rape as being committed by a man to a woman, which fails to address the crime perpetrated against LGBTQI+ citizens and cisgender male citizens who suffer rape.**
1. “Death of a transgender woman raises alarm among Kathmandu’s trans community,” March 11, 2019.[[26]](#footnote-26)
* **Junu Gurung, a transgender woman, was found dead in her apartment after sustaining injuries from a fight with someone who may have been involved in a romantic relationship with her.**
* **The perpetrator beat her “black and blue.”**
* **After this fight happened, Junu went to the police to file a complaint, but was turned away.**

This response from police was especially problematic given they were already aware of the history between Junu and the perpetrator since Junu had filed a complaint against him before he threatened her.

# Scholarship

1. Joel E. Oestreich, *Sexual Orientation and Gender Identity in Nepal: Rights Promotion Through UN Development Assistance*, Journal of Human Rights, 2018. Online: <https://doi.org/10.1080/14754835.2017.1357028>
* **The new Constitution reflects a move towards a more secular and democratic society in Nepal.**
* **The UNDP is actively engaged in working with the courts and legislature of Nepal to further access to justice aims and assist in a rights-based approach to drafting the new Constitution.**
* **UNICEF, UN Women and UNAIDS also work to promote LGBTQI+ rights through their initiatives.**

United Nations agencies are taking an increasingly rights-based approach to development, particularly regarding SOGI. As well, UN agencies have played a role in the development of Nepal’s new political structuring and have used this role to promote SOGI and give it prominence in the country’s rights framework. A confluence of factors has resulted in Nepal being generally supportive of SOGI rights, especially in the South-East Asia region. UN agencies have been able to capitalize on the impartial and largely unreligious views of society towards SOGI issues.

1. Ahonaa Roy, *Gender, Sexuality and Decolonization*, Routledge, 2021. Online: https://www-taylorfrancis-com.myaccess.library.utoronto.ca/books/edit/10.4324/9781003025474/gender-sexuality-decolonization-ahonaa-roy
* **Persons of third genders (intersex or transgender) face social stigma and are often shunned by their families.**
* **They can be kept out of family and social life, schools and the workplace creating significant barriers to a meaningful and fulfilling life.**
* **Case studies show that LGBTQI+ people in Nepal are most accepted by their families when they are financially independent, or their relationship involves grandchildren.**
	+ **This poses additional risks of discrimination for women who are less likely to be financially independent and are subject to arranged marriages forced by familial obligation and duty.**
* **The first citizenship certificate issued under a third gender was given in 2007.**
* **There has also been denial of passports and citizenship certificates with a third gender designation.**

Nepal had a pre-western conceptualization of transgender and third gender identities. It has also taken steps to afford legal recognition and protection to those who identify as third gender, beginning first with the Supreme Court issuing legal recognition of the gender and its protection under the Constitution of Nepal. However, there have not been many concrete steps toward protection and promotion of the rights of gender minorities. Nepal is applauded for its progressive recognition of a third gender on its identity documents, but in reality, it is not always easy to obtain this designation and third gender peoples experience significant social and economic disadvantage in the country. Notably, they are not able to inherit parental property and were not counted in the 2011 census.

1. Susan H. Williams, *Social Difference and Constitutionalism in Pan-Asia,* Cambridge University Press, 2014. Online: <https://books-scholarsportal-info.myaccess.library.utoronto.ca/uri/ebooks/ebooks1/cambridgeonline/2014-03-10/1/9781139567312>

The Nepalese Supreme Court in their landmark decision embraced an interconnected gender and sexuality framework, which relied less on delineating the boundaries of identity more than typical Western frameworks do. The Constitutional protection afforded to SOGI minorities is a legal recognition of their distinctiveness and a desire to protect what makes them different. In Western society the narrative is to equate LGBTQI+ people with cisgender heterosexual people and illustrate the commonalities between the two. This is an affirmation of the historical difference in recognition of LGBTQI+ minorities in society. Nepal has a diverse web of identities with different names and meanings in different parts of the country. Third gender is a self-defined gender identity reinforced by a contextual social understanding of gender unique to Nepalese society.

1. Verena Kohlbrenner, et al., *Perceived Discrimination is an Independent Risk Factor for Suicidal Ideation among Sexual and Gender Minorities in Nepal,* PLOS One, 2016. Online; 10.1371/journal.pone.0159359
* **LGBTQI+ peoples experience numerous health disparities in comparison to the general population.**
* **Almost 40% of all global suicides occur in South-East Asia according to the WHO.**
* **Among gay and bisexual men in Nepal there is a 46.9% prevalence for suicidal ideation and 69.3% instance of verbal, physical or sexual abuse.**
* **Participants in the study who reported experiences of discrimination on the basis of LGBTQI+ identity were three times more likely to have also experienced suicidal ideation.**
* **Transgender women were more likely to experience discrimination due to their feminine gender presentation being easier to identify in public.**

SOGI minorities face a higher prevalence of suicidal ideation than their counterparts. This discrepancy is thought to be due to the increased levels of discrimination faced by SOGI minorities. Research also indicates that levels of suicidal ideation among SOGI minorities are higher in middle and low-income countries due to less supportive environments for these groups. A recommended remedy is suicide prevention programs that target SOGI minorities and action that tackles the societal discrimination they face.

1. Pramod R. Regmi, et al., *Importance of Health and Social Care Research into Gender and Sexual Minority Populations in Nepal,* Asia-Pacific Journal of Public Health, 2015. Online: [www.sagepub.com/journalsPermissions.nav](http://www.sagepub.com/journalsPermissions.nav)
* **Direct discrimination from religious groups is minimal in Nepal.**
* **Research on adverse health outcomes for LGBTQI+ peoples is minimal, but the preliminary evidence points to discriminatory access and higher incidences of alcohol and drug use.**
* **Further research is needed to create culturally appropriate, targeted programs to address these and other health related issues.**
1. Kumud Rana *Transnational AIDS Networks, Regional Solidarities and the Configuration of Meti in Nepal*, Culture, Health, and Sexuality, 2022. Online: <https://doi.org/10.1080/13691058.2021.1969431>
* **Meti/Meta are words of unclear origin and are applied by men to describe their identities in differing ways.**
* **The Blue Diamond Society is the first and only LGBTQI+ NGO in Nepal**
* **Trans activists are often only able to earn money through sex work, which leads to further stigmatization.**

Meti does not have a commonly understood meaning in Nepali society. A 2001 study determined that at the time there was no conceptualization of ‘gayness,’ rather Meti was used to refer to men who have sex with men. In recent years it has fallen out of use with the recognition of a third gender and other varied identities coming into consciousness. SOGI in Nepal cannot be understood in rigid terms, there are local and Indigenous identities at play and no societal consensus on the use of terms. Meti has also been discarded in favour of less stigmatized terms and as Western words such as “transgender” are introduced.

1. Archit B. Baskaran & Joshua Hauser, *Maya To Maya Ho (Love is Love): A Qualitative Study on LGBTQII+ Experiences in Hospice & Palliative Core in Nepal*, 2022. Online: DOI: 10.1177/08258597221092896
* **Transgender women have the highest levels of HIV/AIDS infection.**
* **There is a disconnect in Nepal between the generally progressive legal framework for LGBTQI+ peoples and sociocultural respect and recognition.**
* **There are still no employment, housing, or marriage discrimination laws, meaning that LGBTQI+ peoples can experience discrimination in different arenas.**
* **Interviews with LGBTQI+ patients in hospice care indicated four overarching themes: fear of dying alone, understanding oneself and community, patient as advocate, and intersectionality and eliminating reductionism.**

Study results indicated a significant fear of dying alone without family, reflecting the ostracization experienced by LGBTQI+ peoples. This also reflects the lack of family care and support afforded to dying members of the LGBTQI+ community. The studied hospice is run by the Blue Diamond Society (BDS), the only LGBTQI+ NGO in Nepal. Many patients indicated that coming to the facility was the first time they had connected with other people like them. Through connection they were better able to understand their identity. Patients also indicated a clear link between their LBGTQ+ identity and experiences of poverty, often times leading to sex work. They saw a link between their identity and poor health outcomes. Finding community through BDS was found to be healing and provide peace. Many described their lives as ‘caged’ before being introduced to a wider community of LBGTQ+ people.

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2. *Sunil Babu Pant and Others v Nepal Government***, [**2007] NJA Law Journal 2008. [↑](#footnote-ref-2)
3. Nepal Constitution (2015), Part 3 Fundamental Rights and Duties, Section 18(3) Right to Equality, online [English translation]: https://www.constituteproject.org/constitution/Nepal\_2015.pdf. [↑](#footnote-ref-3)
4. Nepal Constitution (2015), Part 3 Fundamental Rights and Duties, Section 42(1) Right to Social Justice, online [English translation]: https://www.constituteproject.org/constitution/Nepal\_2015.pdf. [↑](#footnote-ref-4)
5. Nepal Constitution (2015), Part 25 National Human Rights Commission, Section 249(1) Functions, duties, and powers of National Human Rights Commission, online [English translation]: https://www.constituteproject.org/constitution/Nepal\_2015.pdf. [↑](#footnote-ref-5)
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