



RECOGNITION OF SAME-SEX MARRIAGE IN NEPAL AND ITS LEGAL EFFECTS

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ABSTRACT

The topic of same-sex marriage has sparked a lot of discussion around the world, and Nepal is no exception. In recent years, Nepali society has become more accepting of the LGBTIQAA++ community, challenging old social stigmas. The Constitution of Nepal, introduced in 2072 BS (2015 AD), provides legal protections for sexual minorities, creating a positive environment for the potential acceptance of same-sex marriages in the future. The courts have also played a key role in protecting the rights of sexual minorities, including granting legal protections like the right to marry, in line with the constitution's principles. However, despite the progress in Nepal's legal system, same-sex marriage is still a complicated issue both in practice and in law, mainly because there are no specific laws addressing it. This article looks at the current status of same-sex marriage recognition in Nepal, considering the country's constitutional and legal frameworks, which may either support or challenge these rights. It focuses on important laws, like the Constitution of Nepal, the National Civil Code, and the Citizenship Act, which play a role in same-sex unions. The article also explores the challenges posed by the lack of legal recognition of same-sex marriages, as there are no laws explicitly covering this issue. The article raises important questions about whether the current constitutional laws are enough to make same-sex marriage legally clear and

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enforceable in Nepal, or if more legal reforms are needed to ensure equal rights and protections for same-sex couples.

Key Words: LGBTIQA++, Same-Sex Marriage, Divorce, Civil Union, Civil Partnership

INTRODUCTION

The history of Homo Sexuality is as old as the human civilization itself. It is not a disease, not a disorder but an individual's right to choose sexual orientation. In the late 1800s, Austro-Hungarian journalist Karoly Maria Kertbeny coined the terms "homosexuality" and "bisexuality," at last giving generations of people a way to describe themselves.¹ Similarly, during the 1990s, activists advocating for lesbian, gay, and bisexual rights adopted the acronym LGB to represent their community a term that has since evolved to be more inclusive. This progress was largely driven by the efforts of individuals like those who took part in a 1975 Pride parade in Boston, the United States.² The rights of LGBTIQA++ individuals have been recognized and promoted through a variety of movements spearheaded by both the community and advocates committed to securing equality for sexual minorities.

LGBTIQA++³ is an abbreviation that stands for **Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and Asexual**. The "+" symbol includes other sexual orientations and gender identities that are not specifically covered by the initial letters. Here's a brief overview of each term:

- **Lesbian:** A woman who is emotionally, romantically, or sexually attracted to other women.
- **Gay:** A person who is emotionally, romantically, or sexually attracted to members of the same gender. Often used to describe men, but can be used for anyone.

¹ Blakemore, Erin. "From LGBT to LGBTQIA+: The Evolving Recognition of Identity." *National Geographic*, October 19, 2021. <https://www.nationalgeographic.com/history/article/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity>.

² Blakemore, Erin, *From LGBT to LGBTQIA+: The Evolving Recognition of Identity*, Nat'l Geographic (Oct. 19, 2021), <https://www.nationalgeographic.com/history/article/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity>.

³ Kendra Cherry, MSE, Everything You Wanted to Know About the LGBTQIA+ Acronym (But Were Afraid to Ask), Verywell Mind (2023), <https://www.verywellmind.com/what-does-lgbtq-mean-5069804> (last visited Nov. 16, 2024).

- **Bisexual:** A person who is emotionally, romantically, or sexually attracted to more than one gender.
- **Transgender:** A person whose gender identity differs from the sex they were assigned at birth.
- **Queer/Questioning:** “Queer” is an umbrella term for sexual and gender minorities who are not heterosexual or cisgender. “Questioning” refers to individuals who are exploring their sexual orientation or gender identity.
- **Intersex:** A person born with physical sex characteristics that do not fit typical binary notions of male or female bodies.
- **Asexual:** A person who experiences little or no sexual attraction to others.

The “+” includes other identities such as non-binary, pansexual, genderqueer, and more, recognizing the diversity and fluidity of human sexuality and gender.

Thus, the term is used to represent a diverse range of sexual orientations and gender identities that do not conform to traditional heterosexual and cisgender norms. The term “sexual minority” includes a variety of gender and sexual identities and expressions that differ from cultural norms. Usually, sexual minorities are comprised of lesbian, gay, bisexual, and transgender individuals.⁴

LGBTIQA++ IN THE CONTEXT OF NEPAL

Nepal is often hailed as a progressive nation due to its formal commitment to equal rights and recognition for sexual and gender minorities. On November 17, 2008, the Supreme Court of Nepal ruled in favor of enacting laws that would guarantee full rights to LGBTIQA++ individuals, defining all gender minorities as “natural persons” under the law, which included the right to marry.

⁴ M.C.C.C. Rodrigues, F. Leite & M. Queirós, Sexual Minorities: The Terminology, *Eur. Psychiatry*, Cambridge Core (2020), <https://www.cambridge.org/core/journals/european-psychiatry/article/sexual-minorities-the-terminology/DEEAE926B05B203DBE5BC2D8D535D954> (last visited Nov. 16, 2024).

As a result, Nepal has become a regional pioneer in advancing LGBTIQAA++ rights, earning international acclaim for its forward-thinking approach. The Constitution of Nepal (2015) stands as one of the few worldwide to explicitly guarantee equal rights to all individuals, irrespective of their sexual orientation or gender identity, highlighting the nation's dedication to inclusivity and non-discrimination. However, the practical implementation of these rights remains incomplete, as the legal recognition of same-sex marriage has yet to be achieved.

Despite landmark decisions by Nepal's Supreme Court, such as the *Sunil Babu Pant v. Government of Nepal* case in 2007⁵, which called for comprehensive legislation to protect the rights of sexual and gender minorities, the absence of a legal framework recognizing same-sex unions has left many LGBTQA++ individuals in legal and social limbo. The lack of recognition impacts critical aspects of life, including inheritance, joint property ownership, taxation, adoption, spousal rights, and citizenship through marriage.

As Nepal continues to navigate its changing socio-political landscape, the recognition of same-sex marriage would not only honor constitutional values but also bring the country in line with international human rights norms. Such recognition would carry profound legal and social consequences, promoting wider acceptance and equality while combating entrenched discrimination. This discussion examines the importance of recognizing same-sex marriage in Nepal, exploring its potential legal impacts on family law, property rights, social security, and more. It offers a thorough insight into the transformative power of this recognition in fostering a more just and inclusive society.

MILESTONES IN NEPAL'S RECOGNITION OF THE LGBTIQA+ COMMUNITY

Nepal has become a progressive leader in South Asia when it comes to the rights and recognition of the LGBTIQA++ community. Over time, a series of landmark legal rulings, constitutional changes, and

⁵ Sunil Babu Pant v. Government of Nepal, Writ No. . 917 of the year 2064 BS (2007 AD)

advocacy initiatives have paved the way for the country's progress toward inclusivity and equality. These significant developments highlight Nepal's shifting approach to gender and sexual diversity, establishing a benchmark for the region.

1. The Supreme Court's Landmark Judgment (2007)

In a landmark decision, Nepal's Supreme Court upheld the basic rights of sexual and gender minorities, instructing the government to adopt policies that would guarantee their legal recognition and protection. The court further directed lawmakers to consider the legalization of same-sex marriage, setting the stage for future reforms. This ruling signaled the start of Nepal's evolution into a more inclusive society.

2. Constitutional Recognition of Gender and Sexual Minorities (2015)

With the promulgation of the 2015 Constitution, Nepal became one of the first nations in the world to explicitly prohibit discrimination based on sexual orientation and gender identity. This legal framework acknowledged the rights of gender and sexual minorities, enshrining their entitlement to equality and dignity under the law.

3. Legal Recognition of the Third Gender in Citizenship and Passports (2015-2019)

Following the Supreme Court's directives, Nepal introduced the "Other" category in citizenship documents and passports, allowing individuals to identify beyond the traditional male-female binary. Therefore, Manoj Shahi⁶, a transgender (MTF) of Lamki Municipality, Kailali, is the first recipient of category "O" in Machine-Readable Passport (MRP) in Nepal. Similarly, is yet to use it for international travel. The Department of Passport has issued a passport in the original name of Manoj Shahi. Similarly, in 2015 AD Bhumika Shrestha⁷ became the first transgender woman to travel abroad by identifying herself as 'other' in the gender category.

⁶ Chhetri, Gyanu. *Perceptions About the "Third Gender" in Nepal*. 11 Dhaulagiri J. Soc. & Anthropol. (2017).

⁷ Human Rights Watch, *Nepal's 'Third Gender' Passport Blazes Trails*, Hum. Rts. Watch (Oct. 26, 2015), <https://www.hrw.org/news/2015/10/26/nepals-third-gender-passport-blazes-trails>.

4. Progress Toward Same-Sex Marriage Legalization (2023 - Ongoing)

Although the law does not address transgender couples or same-sex marriage, in 2017, a Nepali transgender woman and a man were able to register their marriage under the Marriage Registration Act, 2028 (1971) in Dadeldhura. The marriage of “Monia Shahi and Ramesh Nath Yogi”⁸ marked an important milestone in Nepal’s evolving legal landscape with regard to LGBTIQAA++ rights.

Building upon that progress, in 2023, Nepal’s Supreme Court passed an interim order in the case *Pinky Gurung (Sanjeev Gurung) V. Government of Nepal*⁹ allowing same-sex couples to register their marriages, positioning the country as a regional leader on marriage equality. Though full legislative endorsement is pending, this judgment represented a leap of history in the struggle for equal marital rights and greater recognition of LGBTIQAA++ relationships within the law.

5. Inclusion of LGBTIQAA+ Data in the National Census (2021)

For the first time in Nepal’s history, the 2021 national census issued a collection of data related to gender and sexual minorities, presenting a clearer picture of the demography of the LGBTIQAA++ community to assure evidence-based policy formulation that would address their particular needs and concerns. According to the National Population and Housing Census 2021¹⁰ (National Report), results came out with an estimated population of sexual and gender minorities at 2,928, standing at 0.01 percent of the total population. According to gender, Bagmati Province shares 32.7 percent, and Karnali Province shares 2.8 percent of the total population.

6. Advocacy, Pride Parades, and Public Awareness Initiatives

Annual Pride parades and other awareness campaigns through organizations like the Blue Diamond Society have been essential in fighting back against the stigmatization that society has leveled against

⁸ Nepali Couple Registers First Transgender Marriage, RFI (Aug. 5, 2017), <https://www.rfi.fr/en/content/20170805-nepali-couple-registers-first-transgender-marriage> (last visited Feb. 10, 2025).

⁹ *Pinky Gurung v. Government of Nepal*, Writ No. 079-WO-1382 (Nepal June 25, 2024).

¹⁰ Central Bureau of Statistics, Nepal, *Population Census Results*, Census Nepal, <https://censusnepal.cbs.gov.np/results/population> (last visited Feb. 10, 2025).

them. These activities inspire dialogue, provide visibility, and make a very strong demand for equal rights for LGBTIQAA++ individuals in Nepal.

Nepal's Ongoing Commitment to Equality

So far, in Nepal, judicial activism, changes in legislation, and massive activism have driven progress along the journey for the rights of LGBTIQAA++ people. Though much is yet to be done, it continues to be an inspiration across South Asia as to how legal change can reinforce social tolerance.

INTERNATIONAL LEGAL FRAMEWORK SAFEGUARDING RIGHTS OF THE SEXUAL MINORITIES

International law does not overtly recognize rights of sexual minorities as such. In their existing form, these instruments do not explicitly state the particular needs or protection that may be required by these groups. Through a teleological interpretation, however-one that focuses on the wider, inclusive principles of human rights-these can still be considered to indirectly provide support for protection and recognition of the rights of sexual minorities. Such an interpretation, if applied, can give a wider meaning to human dignity, equality, and non-discrimination, which are cardinal values in most international human rights treaties. In this light, the recognition of the rights of sexual minorities can be seen as a logical consequence of the universal rights granted to all individuals in order to create an inclusive and just global society.

International legal frameworks ensure that sexual minorities are protected through the promotion and achievement of ideals dealing with equality, freedom from discrimination, and protection from harm. These instruments range from treaties, conventions, and declarations developed by internationally recognized bodies such as the United Nations and regional organizations, or well-known human rights institutions. Some of the most prominent examples include:

UDHR 1948

The Universal Declaration of Human Rights, 1948, adopted by the United Nations in 1948, features the basic rights and freedoms of all

human beings, irrespective of their sexual orientation or gender identity. The following key articles in the UDHR support it:

- Article 1: “All human beings are born free and equal in dignity and rights.”
- Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Although the UDHR does not refer to either sexual orientation or gender identity explicitly, many understand its provisions relating to equality and non-discrimination to include sexual minorities.

ICCPR, 1966

The International Covenant on Civil and Political Rights, 1966, guarantees the individuals’ civil and political liberties and protects them against discrimination based on various grounds, including sexual orientation. Article 26 of the ICCPR, 1966, is as under: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹¹

THE YOGYAKARTA PRINCIPLES

In 2006, a group of renowned international human rights experts gathered in Yogyakarta, Indonesia, to address documented patterns of abuse. They developed the Yogyakarta Principles¹², a set of global guidelines on human rights related to sexual orientation and gender identity. These principles reaffirm binding international legal standards that all states must uphold, envisioning a future where everyone, born free and equal in dignity and rights, can fully enjoy that fundamental birthright. Similarly,

¹¹ International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171.

¹² The Yogyakarta Principles, *Yogyakarta Principles* (Nov. 2006), <https://yogyakartaprinciples.org/principles-en/>.

The Yogyakarta Principles plus 10 (YP+10)¹³ introduces additional principles and state obligations regarding the application of international human rights law to sexual orientation, gender identity, gender expression, and sex characteristics, complementing the original Yogyakarta Principles. Adopted on November 10, 2017, YP+10 builds upon advancements in international human rights law and a growing awareness of the violations faced by individuals based on sexual orientation and gender identity. It also acknowledges the distinct and intersecting aspects of gender expression and sex characteristics.

Principle 24¹⁴ of the Yogyakarta Principles establishes the Right to Found a Family. Reads “Everyone has the right to form a family, regardless of sexual orientation or gender identity. Families exist in diverse forms and must not face discrimination.”

States shall:

- Ensure equal access to adoption and assisted reproduction.
- Recognize diverse family structures beyond marriage or descent.
- Prevent discrimination in family-related benefits, employment, and immigration.
- Prioritize the best interests of children in all decisions, without bias based on sexual orientation or gender identity.
- Guarantee equal rights for same-sex marriages, partnerships, and unmarried couples.
- Ensure that all marriages and partnerships are entered into with full and free consent.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

A regional accord that upholds human rights across Europe, featuring landmark decisions related to the rights of sexual minorities, such as the decriminalization of same-sex relations. In **2010**, the ECtHR

¹³ The Yogyakarta Principles Plus 10, *Yogyakarta Principles* (Nov. 10, 2017), <https://yogyakartaprinciples.org/principles-en/>.

¹⁴ The Yogyakarta Principles, *Principle 24: Right to Found a Family*, <https://yogyakartaprinciples.org/principle-24/>.

ruled in the case of **Schalk and Kopf v. Austria**,¹⁵ which found that the ECHR does not require member states to allow same-sex marriage. However, the Court emphasized that states have a duty to provide legal recognition to same-sex couples through alternative legal mechanisms such as civil unions or registered partnerships.

In addition, the Court has affirmed that states must adapt their laws in good faith and offer equal legal protection to same-sex couples in areas such as inheritance rights, social benefits, and legal recognition of relationships. The ruling has influenced many European countries to adopt laws recognizing same-sex marriages or partnerships.

In short, while the ECtHR has not directly mandated the legalization of same-sex marriage, its rulings have pushed for legal recognition and equal treatment for same-sex couples across Europe.

Reports from the Inter-American Commission on Human Rights (IACHR): Analytical documents produced by the IACHR¹⁶, focusing on the rights of sexual minorities within the Americas, and presenting recommendations for governments to foster equality and prevent discriminatory practices.

These instruments and guiding principles collectively strive to cultivate a global landscape where sexual minorities are guaranteed dignity, fairness, and unwavering protection from discrimination and violence.

International legal instruments have played a crucial role in guiding domestic court rulings that protect the rights of sexual minorities.

Constitutional Arrangements Recognizing Sexual Minorities

The Constitution of Nepal, promulgated in 2072 B.S. (2015), is considered a landmark in South Asia, with provisions on gender equality, inclusiveness, and non-discrimination. Below are key constitutional articles and their implications for recognizing sexual minorities.

¹⁵ Schalk and Kopf v. Austria, App. No. 30141/04, Eur. Ct. H.R. (June 24, 2010).

¹⁶ Inter-Am. Comm'n on Human Rights, *Report on the Situation of Human Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS, <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/t/DLGBTI/default.asp> (last visited Feb. 9, 2025).

PREAMBLE, CONSTITUTION OF NEPAL, 2072 B.S. (2015)¹⁷

The Preamble to the Constitution creates the state's commitment to eradicating discrimination based on gender and advances equity, participatory and proportional representation, and positive discrimination, to which sexual minorities are entitled. The word "establishing an equitable society" is such a broad vision that might imply, by implication, even same-sex marriages.

Article 12 - Right to Citizenship¹⁸

Article 12 protects the right to citizenship on the ground of gender identity. Sexual minorities are free to choose their gender identity as a progressive move toward inclusiveness of gender. This can be important for same-sex couples looking for recognition, as it shows openness toward different genders in the civic landscape.

Article 16 - Right to Live with Dignity¹⁹

Article 16 provides that every citizen is entitled to a life with dignity. This could be interpreted as allowing the right of same-sex marriage, for not being allowed to marry and start a family would amount to a violation of dignity and equality before the law.

Article 18 - Right to Equality²⁰

Article 18, sub-articles 1, 2, and 3: The right of everyone to be treated equally. No one may be discriminated against based on sex, sexual orientation, and gender identity. This article safeguards against discrimination based on legal measures and could find application in giving same-sex couples a right to marriage equality for equal treatment.

Article 24 - Rights against Untouchability and Discrimination²¹

Article 24, therefore, reiterates Nepal's commitment to ending discrimination. Though this article has been conventionally interpreted in relation to caste-based discrimination, the broad wording already opens

¹⁷ *Constitution of Nepal* pmbl. (2015).

¹⁸ *Constitution of Nepal* art. 12.

¹⁹ *Constitution of Nepal* art. 16.

²⁰ *Constitution of Nepal* art. 18.

²¹ *Constitution of Nepal* art. 24.

avenues for sexual minorities to challenge the discrimination in practice, including denials of rights to marry.

Article 26 - Religious Freedom and Reservations²²

Article 26 allows religious institutions to have some reservations regarding same-sex marriage, so that religious freedom is preserved in a culturally sensitive way with regard to marriage equality. Nepal has also emerged as a destination wedding point for foreigners who want to get married according to Hindu rituals.

Article 38 - Rights of Women (Reproductive Rights)²³

Sub-article 2 of Article 38 stipulates reproductive rights, which indirectly influences the right of same-sex couples to family building. The opening of same-sex marriage is supposed to extend reproductive and family rights to sexual minorities, including giving them access to assisted reproduction technologies and surrogacy.

Article 42 - Right to Social Justice²⁴

Article 42, sub-article 1, provides that the state shall ensure equal participation of all people, irrespective of sex, caste, or community, in state mechanisms on principles of social justice, perhaps reinforcing a right to marital recognition.

Article 47 - Directive Principles, Policies, and Responsibilities of the State²⁵

The article then highlights that the state is to undertake laws for eradicating discrimination. Even though directive principles are not enforceable in a court of law, they hold persuasive value in court judgments and can be used as a guideline to demand legalization of same-sex marriage.

Legislative Provisions Affecting Same-Sex Marriage

Beyond constitutional protections, various laws in Nepal address gender rights, family law, and property law, which indirectly affect same-sex marriage recognition.

²² *Constitution of Nepal* art. 26.

²³ *Constitution of Nepal* art. 38.

²⁴ *Constitution of Nepal* art. 42.

²⁵ *Constitution of Nepal* art. 47.

NATIONAL CIVIL CODE, 2074 B.S. (2018)

While family law makes Part-3 of the National Civil Code central in place regarding the marriage regulation process, yet definition over marriage between man and woman still lingers. Still, on the legal basis of the aspect of equality and inclusiveness, interpretation might grant the same-sex marriage legality.

Property Law

Inheritance rights under the National Civil Code of Nepal derive from property law, which so far regulates only traditional heterosexual marriages. Recognition of same-sex marriage would entail expanding these rights in property and inheritance to same-sex partners. A clear statutory provision thus becomes immediately necessary for regulating same-sex marriage, ensuring legal recognition and protection for the rights of same-sex couples.

Private International Law

Part-6 of the National Civil Code discusses private international law and has relevance for the cross-border recognition of same-sex marriages celebrated abroad. The case would be that, if same-sex marriage is legally recognized in Nepal, on return, Nepalese nationals married abroad in same-sex marriages could seek recognition of their marital status.

Citizenship Act, 2063 B.S. (2007)

The Citizenship Act's recognition of citizenship rights as related to gender identity legally is also in great favor of same-sex couples in terms of securing legal familial ties. It is particularly crucial in the cases of same-sex partners desiring to establish parental rights, ensure inheritance protections, or seek to sponsor foreign spouses for residency and legal recognition. The law, while granting greater legal certainty to LGBTIQAA++ families and equality in family building, succession, and immigration, includes a recognition of gender identity within the citizenship provisions. Full realization of such protections would need further clarity from a legislative perspective, which will also give the means to effectively enforce these laws.

Safe Motherhood and Reproductive Rights Act, 2075 B.S. (2019)

This Act, along with other subsequent guidelines about reproductive health, forms the basis for allowing or disallowing the rights of LGBTIQA++ people in their efforts toward creating families through methods of surrogacy, assisted reproductive technologies, and other ways of reproduction. However, insufficient legal standing on same-sex marriage forbids equal access to such facilities as compared to heterosexual couples. It will just confirm, instead, the right of LGBTQ+ people to family life, together with equal opportunities in reproductive healthcare regarding surrogacy, IVF, and parental rights. A legal, clearly regulated situation would guarantee a feeling of security for the families of LGBTIQA++, protect the rights of the children born through those methods, and increase inclusivity within both legal and healthcare spaces.

NATIONAL INCLUSION COMMISSION ACT, 2074 B.S (2018).

These inheritance rights under the National Civil Code of Nepal fall under property law, which is currently applied only to traditional heterosexual marriages. Recognition of same-sex marriage would mean an extension of property and inheritance rights to same-sex partners. Therefore, there is an urgent need for a specific statutory provision with regard to regulating same-sex marriages that would legally recognize and protect same-sex couples.

Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Violence, 2072 (2015)

The Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Violence, 2072 (2015), has undergone several amendments in the recent years. But even after such amendments, the Act fails to clearly mention “sexual minority” or the persons belonging to the “gender of other” category. Its provisions remain primarily focused on binary genders, male and female, thus leaving a wide gap in protection under the law for gender diverse people.

This Act essentially needs an amendment in the background of the Constitution of Nepal 2015, assuring equal rights and thus needs to be made more inclusive to protect rights regardless of their gender identity

and sexual orientation. This would further be a landmark development in taking away structural discriminations based on gender and meet the constitutional commitments of the nation toward inclusiveness and non-discrimination.

INTERNATIONAL PRACTICES

While globally many countries have embraced marriage equality through the legalization of same-sex marriage through civil marriage acts, Canada and the United Kingdom are among those countries that have passed legislation providing rights of marriage to same-sex couples, further entrenching rights of equality and non-discrimination.

Contrarily, in many countries, homosexuality is criminalized, making people in the LGBTIQAA++ community suffer under legal penalties, social stigma, and discrimination. This legal inequality not only impacts individuals within these jurisdictions but also significantly affects the citizens of Nepal who may visit, work, or live in those countries. Although Nepal is forward-thinking on issues of LGBTIQAA++ rights and has even included the recognition of gender and sexual minorities in its constitution, Nepalese-identifying LGBTIQAA++ individuals still struggle legally and socially abroad. However, addressing global inequalities requires stronger international advocacy, diplomatic engagement, and a policy response that protects LGBTIQAA++ rights beyond national borders. Notable cases such as *Goodridge v. Department of Public Health*²⁶ (Massachusetts) have been landmark in affirming same-sex marriage rights on grounds of equality.

Several important laws and legal developments have emerged related to same-sex marriage in a global context due to different approaches that different countries have adopted, which may be inspired by cultural, political, and social considerations. Some of the most significant legal milestones include:

Netherlands: With the passage of the *Act on the Opening Up of Marriage in 2001*²⁷, the Netherlands became the first country in the world to legalize same-sex marriages, thus setting a global precedent.

²⁶ *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

²⁷ *Act on the Opening Up of Marriage (Wet Openstelling Huwelijk)* (2001) (Neth.).

Canada: In 2005, same-sex marriage was legalized throughout Canada after several decisions of provincial courts confirming equality in marriage with the passing of the *Civil Marriage Act, S.C. 2005, c. 33*.²⁸

Spain: Spain passed Law²⁹ 13/2005 in 2005 amending the Spanish Civil Code to legalize same-sex marriage, thus becoming the third country in Europe to legalize same-sex marriage.

United States: The U.S. Supreme Court's landmark ruling in *Obergefell v. Hodges*, 576 U.S. 644³⁰ (2015) brought same-sex marriage into the purview of a constitutional right and therefore invalidated state bans, de facto making it legally recognized nationwide. In US (Respect for Marriage Act) RFMA³¹ is a federal law in the United States, adopted on December 13, 2022, which makes sure that marriage between the same sex and marriage between people from different races are valid federally. The Respect for Marriage Act repealed DOMA and bound every state to give recognition to legal marriages celebrated in all states, irrespective of the couple's sex, race, ethnicity, or national origin. However, the act does not compel the states to legalize same-sex marriage in case the U.S. Supreme Court decides to annul *Obergefell v. Hodges* (2015). Rather, it requires the federal government and all states to respect and recognize marriages performed in jurisdictions where they are legal.

Argentina: In 2010, Argentina became the first Latin American nation to legalize same-sex marriage, enacting Law 26.618 (*Matrimonio Igualitario*)³², granting the full rights of marriage to homosexual couples.

Germany: Marriage for All Act³³, passed in 2017 by the Bundestag, gave full marriage and adoption rights for same-sex couples.

South Africa: It became the first African nation to legalize same-sex marriage through the *Civil Union Act 17*³⁴ of 2006, after a

²⁸ Civil Marriage Act, S.C. 2005, c. 33 (Can.).

²⁹ Law 13/2005, of 1 July, Amending the Civil Code in the Matter of the Right to Marry (B.O.E. 2005, 157) (Spain).

³⁰ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

³¹ Respect for Marriage Act, Pub. L. No. 117-228, 136 Stat. 2305 (2022).

³² Law No. 26.618, July 15, 2010, [34072] B.O. 1 (Arg.).

³³ Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts [Marriage for All Act], Sept. 20, 2017, BGBI I at 2787 (Ger.).

³⁴ Civil Union Act 17 of 2006 (S. Afr.).

Constitutional Court ruling that the prior marriage laws had been discriminatory.

Australia: Marriage between persons of the same-sex was legalized when the Australian government passed the *Marriage Amendment Definition and Religious Freedoms Act 2017*³⁵, which supported the result from a national postal survey in favor.

In 2019, Taiwan became the first country in Asia to legalize same-sex marriage, with the passing of the *Act for Implementation of J.Y. Interpretation No. 748*³⁶ following a ruling from the Constitutional Court that recognized marriage equality.

Finland gave same-sex marriage legal recognition in 2017 through the *Marriage Act (156/2015)*³⁷ after a lengthy public debate and judicial processes.

These laws reflect an increasingly broad acceptance of same-sex marriage on a global level, yet many wide legal differences exist. Many countries in Africa, the Middle East, and in large swaths of Asia criminalize same-sex relations or provide no legal protection to LGBTIQAA++ couples. Though international efforts against the criminalization of same-sex conduct persist, in those nations where full equality has not yet been reached, such changes by law remain required.

Landmark Cases and Judicial Precedents in LGBTQ+ Rights

The Nepalese judiciary has played an active role in developing laws and regulations in favor of LGBTIQAA++ people. Based on the concepts of equality, dignity, and non-discrimination, the apex court has passed a couple of landmark decisions upholding the rights of sexual and gender minorities. Despite such pronouncements by the judiciary sounding pretty progressive, full legal recognition and protection for LGBTIQAA++ people will require further legislative reforms, at least regarding same-sex marriage.

³⁵ Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Austl.).

³⁶ Act for Implementation of J.Y. Interpretation No. 748, May 22, 2019 (Taiwan).

³⁷ Marriage Act 156/2015 (Fin.).

Key Judicial Decisions on LGBTQ+ Rights in Nepal

*Sunil Babu Pant and Others v. Government of Nepal (2007)*³⁸

In this landmark case, the Supreme Court of Nepal ruled that sexual minorities are entitled to equal rights and protections under the law. The court officially recognized the third gender, directing the government to formulate laws safeguarding LGBTIQAA rights. Additionally, the ruling established that sexual orientation and gender identity are natural and not a mental illness, marking a significant step toward legal and social recognition. However, while the judgment laid the foundation for LGBTIQAA rights, it did not provide a definitive ruling on same-sex marriage, leaving the issue dependent on future statutory reforms.

*Prem Kumari Nepali v. National Women's Commission*³⁹

In this case, the court reinforced the constitutional right of all individuals to equality and non-discrimination, affirming that sexual orientation should not be a barrier to enjoying fundamental rights. The ruling underscored the need for inclusive policies to ensure that LGBTIQAA individuals can exercise their rights without facing legal or social discrimination.

The Nepalese judiciary has also contributed much to the protection of the rights of individuals, especially sexual minorities, which have been further protected under the Constitution of Nepal. Landmark judgments passed by the courts have accorded basic rights to LGBTIQAA individuals that guarantee dignity, equality, and nondiscrimination. Concurrently, several judicial decisions have spearheaded progressive legal reforms: a third gender is recognized, and equal marriage, nondiscrimination at employment, education, and public services are instituted. The judiciary interpreted constitutional provisions from a rights-based approach, and by doing so, managed to reinforce commitments to inclusivity, social justice, and human rights for the country of Nepal.

³⁸ Sunil Babu Pant v. Gov't of Nepal, Supreme Court of Nepal, Writ No. 917 of 2007 (Dec. 21, 2007), available at <https://www.icj.org/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>.

³⁹ Prem Kumari Nepali v. Nat'l Women's Comm'n, No. 8954, NKP 2070 B.S., vol. 1 (Sup. Ct. Nepal 2013).

Need for Comprehensive Statutory Arrangements

While the Constitution of Nepal has taken a big leap forward in upholding the rights of sexual minorities, there is still dire need for legislative reform with respect to certain aspects, namely foreign marriages, divorce, property rights, alimony, child adoption, surrogacy, and In vitro fertilisation IVF⁴⁰. Without explicit legal arrangements made on same-sex unions, there is a legal vacuum that leaves LGBTIQAA++ individuals without indicated rights with regard to marriage and its implications. This gap in legislation obstructs full realization of legal rights by sexual minorities, family building, and access to equal legal protection compared to other citizens. Therefore, the legislation of separate statutory instruments or the amendment of existing family laws is quite necessary in ensuring full realization of rights and protection accorded to LGBTIQAA++ persons by the law.

Again, the drafting of a Civil Union Partnership Act or an amendment to prevailing family laws would also be an effective tool in the protection and regulation of same-sex marriages. This type of law would only be a legal framework with rights, responsibilities, and protections for same-sex couples. In this way, same-sex couples shall not be legally discriminated against from accessing some benefits like inheritance, health care rights, and support a spouse. This will ensure there is no discrimination against them in legally accessing these benefits.

The gap in the law regarding same-sex marriages can only be addressed when the government passes a law specifically covering the legal aspects of such marriages. This is important to establish legal rights for same-sex couples in areas like marriage, divorce, inheritance, and spousal rights, just like in heterosexual marriages. For example, a Civil Union Partnership Act or a law to update family laws would be crucial, as it would give legal recognition to same-sex couples and define their rights. This would allow them the same rights as other couples, such as property ownership, filing joint taxes, and parental rights.

Having clear legal recognition for same-sex marriage and civil unions would help LGBTIQAA++ people live with dignity, form families,

⁴⁰ Yale Medicine, In Vitro Fertilization (IVF), *Yale Medicine*, <https://www.yalemedicine.org/conditions/ivf> (last visited Feb. 10, 2025).

and access the legal protections they deserve. The new law would clarify the government's responsibilities, as well as the role of religious and private organizations in supporting LGBTIQAA++ rights. This legislation would align with the constitutional guarantees of equality, representing a major step toward ensuring equal rights and dignity for sexual minorities in Nepal.

CONCLUSION

While Nepal's constitutional and legal frameworks strongly support the rights of sexual minorities, including some fundamental rights that could help recognize same-sex marriage, explicit legal recognition of same-sex marriage is still not in place. Any future legal changes to support marriage equality in Nepal should be guided by the Constitution's principles of non-discrimination and equality. The next step is to ensure that laws and court decisions provide clarity, helping bridge the gap between constitutional ideals and social acceptance. This would help Nepal fulfill its promise of being an inclusive and fair society.

Although the Nepalese Constitution set a progressive foundation for LGBTIQAA++ rights, the full realization of inclusion and equality cannot happen without specific laws addressing marriage, family, and reproductive rights. These legal reforms would not only strengthen Nepal's commitment to equality but also ensure the protection of all citizens' rights and dignity, regardless of sexual orientation or gender identity. With such legal protections, LGBTIQAA++ individuals would enjoy the same rights and dignity in marriage, family life, and society as their heterosexual counterparts. This would allow Nepal to truly become an example of inclusivity in South Asia.

