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National Human Rights Commission recommends that Nepal legalise same-sex marriage

The commission, in a report released Wednesday, said that while Nepal has made progress in ensuring LGBTIQ rights, it has yet to ensure full legal rights to queer individuals.

By Binod Ghimire

The Kathmandu Post (01.07.2020) - <https://bit.ly/3efHY6S> - The National Human Rights Commission has said that it is unfortunate that same-sex marriage has not been legalised in the country even though it has been five years since an expert committee recommended legalisation.

The constitutional human rights watchdog, in a [report](#) made public on Wednesday, recommended that the government start opening legal channels for same-sex marriage, which has so far been legalised in 29 countries other countries.

As mandated by a landmark 2007 Supreme Court verdict, an expert team formed to study the possibility of legalising same-sex marriage in Nepal had recommended, in 2015, that the government lift legal restrictions preventing marriage between two individuals of the same sex.

“While it is positive that the government has started providing citizenship and passports under the ‘O’, or ‘other’, gender category, it is unfortunate that no steps have been taken to implement the report of the expert team formed as per the Supreme Court verdict,” reads the study report on sexual minorities released on Wednesday.

The December 2007 Supreme Court verdict had not just acknowledged the rights of sexual minorities, but also directed the government to make necessary arrangements—including new laws or amendments to existing ones—to ensure that people of different gender identities and sexual orientations could enjoy their rights without discrimination.

While Nepal is often hailed as a progressive beacon of LGBTIQ individuals in the region, its comparatively progressive laws have yet to trickle down into mainstream society. Queer individuals, particularly transgenders, continue to face harassment, discrimination and violence. A planned amendment to the Citizenship Act is also considering requiring proof of gender reassignment before allowing transgender individuals to claim citizenship under their new identity.

According to the human rights commission, only 170 individuals have so far received citizenship under the ‘O’ category. Similarly, 1,500 identified themselves under the ‘other’

category in the 2011 national census. These figures don't represent the actual population of the LGBTIQ community, according to the commission. It, therefore, has recommended all three tiers of governments to ensure that no transgender people are excluded in the national census being conducted next year.

The Central Bureau of Statistics has already started preparations for the census, which is conducted every 10 years. The commission has concluded that the transgender community continues to face significant discrimination in society and the three levels of government haven't yet taken adequate measure to ensure their rights.

The constitutional watchdog recommended that the federal government promulgate a special Act by incorporating provisions for "positive discrimination" to the transgender community and provide scholarships and hostel facilities up to higher education. It has also recommended the creation of a fund to financially support those who are willing to undergo gender reassignment surgery.

Nepal might have made progress when it comes to queer rights but it still has a long way to go

Although the constitution enshrines equal rights regardless of gender, sexual identity or orientation, same-sex marriage is still not legal.

By Ankit Khadgi

The Kathmandu Post (17.05.2020) - <https://bit.ly/2ZyYyuV> - Niraj and Aashik met on Facebook two years ago and started talking to each other as friends. Slowly, they fell in love and eventually, decided to get married. With the support of their families, the two young men got married in a church a few months ago.

"Our family supports our love and treats us with respect," said 24-year-old Aashik, who lives with 20-year-old Niraj in Chitwan. "Our families and friends welcomed our union with open arms and heart."

Aashik and Niraj might have gotten married but in the eyes of the law, their marriage has no legal merit. Despite being hailed as a progressive bastion for LGBTIQ rights in the region, Nepal's Civil Code still acknowledges marriage as when "a man and a woman accept each other as the husband and wife".

Nepal does have a number of progressive laws when it comes to queer rights, especially when compared to the rest of South Asia. But for many members of the LGBTIQ community, these laws don't go far enough and sexual and gender minorities still find it difficult to get equal treatment before the law. Furthermore, these laws have not translated into changes in larger society, which still remains highly conservative.

"The conversation regarding queer rights has not gone beyond the 2007 verdict. We are still treated like third-class citizens," said Rukshana Kapali, a queer rights activist.

In 2007, following a Supreme Court ruling, the constitution recognised LGBT rights as fundamental human rights, ensured protection for gender and sexual minorities, and legalised homosexuality. This legal recognition paved the way for more laws, including recognition in the most recent 2015 constitution, building Nepal's image in the international community as a queer-friendly country and leading individuals to even settle here.

But the ground reality is darker. Members of the queer community are still denied equal rights to marriage, property rights, and education. And they continue to face constant harassment and attacks, sometimes even culminating in murder.

One major step forward for LGBTIQ rights to translate on the ground would be to ensure same-sex marriage, say queer rights activists.

In 2015, a committee formed to study 'same-sex' marriage submitted a 85-page report to the Prime Minister's Office recommending the legalisation of same-sex marriage. But that recommendation never translated into law.

"Our laws do not abide by the constitution, which strictly says that no one can be discriminated against on the basis of their gender," said Sujan Pant, an advocate and assistant professor at Mid-Western University.

According to Bibek Suling Magar, programme officer at the Federation of Sexual and Gender Minorities Nepal, by preventing queer communities from getting legally married, the government is prohibiting them from availing of all other rights that a married couple can exercise. In Nepal, marriage provides rights and benefits for spouses to sell and transfer jointly registered property, open joint bank accounts, and property rights upon the death of the spouse.

Magar says that the government's failure to acknowledge same-sex marriage paints a larger picture of how queer communities are deprived of many fundamental rights.

Many LGBTIQ individuals still find it difficult to get jobs, leading them to resort to sex work, which comes with both health and safety hazards.

As sex work remains illegal in Nepal, it opens workers up to many more avenues of harassment, especially at the hands of the police, which in turn means that queer community members are reluctant to seek help from the police when they actually need it.

"The situation in Province 2 is really alarming as most of the authorities and police personnel lack understanding and empathy for our community," said Nagma Khan, queer rights activist at Pahichan Nepal who oversees queer issues in Province 2. "When someone from our community seeks help from the police they are instead questioned and sometimes blamed as well. At government offices, we have to put up with homophobic and transphobic slurs."

Queer sex workers are often doubly at risk of physical and sexual assault, but Nepal's rape laws, according to the 2015 Criminal Code, describe rape as a forceful act committed by a man to a woman, failing queer citizens and cisgender male citizens who might suffer rape.

"The rape laws are discriminatory and fail to address the crime perpetrated to the queer community," said Sujan Pant, an advocate. "Because of this provision, the queer community cannot easily seek legal help if they face problems."

The LGBTIQ community also suffers from a deeper problem wherein all individuals from across the spectrum are treated as one. Many government officials still consider all members of the LGBTIQ community as "third gender", as they are the most visible members.

After the Sunil Babu Pant vs Government of Nepal case, the Supreme Court-mandated an 'other' gender category in all government documents, leading to the widespread awareness of a 'third gender'. And as per a 2012 directive by the Home Ministry, the 'other' category

encompasses those who identify as lesbian, gay, bisexual, transgender, and intersex, regardless of the fact that gender identity and sexual orientation are two different things.

This year, on the occasion of May 17, the International Day against Homophobia, Biphobia, and Transphobia (Queerphobia), rights activist Kapali, along with members of Queer Youth Group, a network of youth activists, will be publishing a demand sheet regarding the legal recognition of gender identity and asking for an elimination of all discriminatory provisions.

"We've raised the issue of gender identity in the past too but now, we are doing it in a systematic and organised way through a demand sheet," said Kapali. "There's confusion among people about sexual orientation and gender identity. Trans people are compelled to use derogatory gender options like 'others', which they may not necessarily identify as."

The queer movement is multifaceted and the government needs to acknowledge the diversity of its members, say rights activists. That is the only way for the queer movement in Nepal to progress, the government needs to do its part.

"Until the government acknowledges that all are equal in the eyes of the law, and ensures equal legal rights and protection to us, our community will be severely affected, as well as the nation," said Pinky Gurung, president of Blue Diamond Society, Nepal's oldest queer rights organisation.
