## Protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression

**Input on Lesbian, Bisexual and Queer Women in Nepal**

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Lesbian, bisexual, and queer (LBQ) women in Nepal navigate a complex intersectional landscape that intertwines their sexual orientation with various other aspects of their identity, such as gender, caste, class, disability and ethnicity. In a society that has traditionally been shaped by patriarchal norms and conservative values, LBQ individuals often face unique challenges that stem from the intersections of multiple marginalized identities. Nepal, despite its diverse cultural landscape, has been slow in recognizing and accepting diverse sexual orientations. Societal stigma and a lack of inclusive curricula hinder education, while discrimination from healthcare providers affects their well-being. Employment discrimination compounds economic vulnerability, and the enduring stigma forces many to remain closeted. Despite progress in LGBTQ+ rights, LBQ women in Nepal continue to grapple with invisibility within society and advocacy circles. Empowering this marginalized community requires inclusive policies, awareness campaigns and support networks addressing their unique experiences and challenges.

***Article 38*** of the Nepal Constitution 2015 stands as a cornerstone in the pursuit of gender equality and women's rights. This constitutional provision not only acknowledges the inherent dignity of every woman but also outlines specific guarantees to ensure their equal status in various aspects of life. It states that *“Every woman shall have equal lineage right without gender-based discrimination.”* It also addresses that every woman shall have the right to safe motherhood and reproductive health. However, the experiences of discrimination faced by LBQ women in healthcare settings shed light on the existing challenges and gaps in implementing these constitutional provisions. LBQ individuals often encounter discriminatory practices (*unable to adopt child or IVF, which misleads LBQ women can’t conceive/adopt baby)* and unnecessary inquiries from healthcare providers creating barriers[[1]](#footnote-1) to accessing safe and respectful reproductive health services. It clearly articulates a commitment to protecting women from various forms of violence and exploitation, ensuring their participation in state bodies and providing special opportunities in education, health, employment, and social security. However, the unfortunate reality is that LBQ women often face challenges and discrimination (*Unequal payment, abuse- despite having sexual harassment act[[2]](#footnote-2))* in their workplaces and educational settings after disclosing their sexuality.

The legal landscape regarding gender equality and intimate partner violence in Nepal reflects a mix of international human rights obligations and domestic laws. While Nepal has ratified major international conventions that promote equality and non-discrimination, the translation of these principles into comprehensive domestic laws, especially concerning intimate partner violence within the LGBTQ+ community[[3]](#footnote-3), remains a work in progress. The ***Treaty Act of 1990*** establishes that international provisions, once ratified by the Parliament of Nepal, shall be enforceable as national law. Despite this, challenges persist in aligning the legal framework with the principles of gender equality and protection from gender-based violence, particularly in the context of intimate partner violence. The ***National Civil Code of 2017*** addresses aspects of marriage and divorce, and the ***National Penal Code of 2017*** criminalizes marriage without consent also prohibiting marital rape. However, the limitation arises in the definition of marriage, which is specifically framed as a union between opposite sexes. This exclusionary definition restricts the application of provisions related to marriage[[4]](#footnote-4), divorce, and marital rape to heterosexual couples, thus neglecting the rights of gender and sexual minorities.

Under Part-3 Fundamental Rights and Duties of the ***Nepal Constitution 2015[[5]](#footnote-5)***, several articles explicitly guarantee rights and protections for all citizens, including those belonging to the LGBTI community:

**Article 12** guarantees "Citizenship based on Descent along with Gender Identity," ensuring that individuals can obtain a certificate of citizenship of Nepal with gender identity based on the name of their mother or father.

**Article 16** guarantees Right to Live with Dignity: (1) Every person shall have the right to live with dignity. (2) No law shall be made providing for the death penalty to anyone.

**Article 17** outlines various freedoms, including freedom of opinion and expression. ***Article 17 2 (b)*** of the Nepal Constitution 2015 guarantees “Freedom to assemble peaceably and without arms”. ***Article 17 2 (d)*** of the Nepal Constitution 2015 guarantees Freedom to form unions and associations. It states that (1) No person shall be deprived of his or her personal liberty except in accordance with law. (2) Every citizen shall have the following freedoms: - (a) Freedom of opinion and expression; ***(b) Freedom to assemble peaceably and without arms;* (**c) Freedom to form political parties; ***(d) Freedom to form unions and associations;***(e) Freedom to move and reside in any part of Nepal; (f) Freedom to practice any profession, carry on any occupation and establish and operate any industry, trade and business in any part of Nepal.

***Article 18*** of the Nepal Constitution 2015 delineates the Right to Equality, upholding the principle that all citizens are equal before the law and are entitled to equal protection under it. The constitution prohibits discrimination in the application of general laws, emphasizing that factors such as origin, religion, race, caste, tribe, sex, physical condition, disability, health status, marital status, pregnancy, economic condition, language, region, ideological conviction, or any similar grounds should not influence legal treatment. Additionally, the state is directed not to engage in discriminatory practices among citizens based on various criteria, ensuring a commitment to equality across diverse dimensions.

**Article 20** focuses on "Rights relating to Justice," ensuring the right to be informed, the right to a fair trial, and the right to free legal aid for indigent parties.

**Article 29** guarantees the "Right against Exploitation," prohibiting exploitation on various grounds, including religion, custom, and tradition, and addressing issues such as human trafficking and forced labor.

**Article 33** ensures the "Right to Employment," emphasizing the right to employment and the right to choose employment.

**Article 35** covers the "Right relating to Health," guaranteeing the right to free basic health services, access to information about medical treatment, and equal access to health services.

**Article 42** emphasizes "Right to Social Justice," addressing proportional inclusion in state bodies, special opportunities and benefits for marginalized communities, and the rights of citizens with disabilities.

The ***Right to Safe Motherhood and Reproductive Health Act[[6]](#footnote-6), 2075 (2018)*** delineates comprehensive provisions under Chapter 2, specifically outlining the "Right to Reproductive Health." This crucial legislation aims to safeguard and empower individuals in matters pertaining to sexual and reproductive health. The key provisions within this chapter include- Every woman and teenager possess the unequivocal right to access education, information, counseling, and services related to sexual and reproductive health. This reflects a commitment to promoting awareness and ensuring that individuals, regardless of age, are equipped with the necessary knowledge. The legislation affirms the right of every person to receive services, counseling, and information regarding reproductive health, emphasizing inclusivity beyond gender distinctions. Women are guaranteed the right to safe motherhood and reproductive health, granting them autonomy to make decisions regarding the spacing and number of children they wish to have. The Act ensures that women have the right to obtain abortion services in accordance with the provisions outlined, acknowledging the importance of reproductive choices. Importantly, individuals have the right to make choices regarding their reproductive health services, underscoring the principle of autonomy and informed decision-making. However, sexual and gender minorities experience various forms of violence mainly because of their sexual orientation and gender identity. Violence against LBQ persons is particularly in the form of societal stigmatization, homophobic violence and discrimination which impacts access to sexual and reproductive health right (SRHR) services.

***Article 35*** of the Constitution of Nepal 2015 has ensured the “Right relating to Health”. Everyone has the right to information and education regarding sexual and reproductive health rights. However, the limited access of LBQ women to SRHR as well as HIV and AIDS services obstructs the realization of their human rights. The key rights affected are the right to a standard of living adequate for health and wellbeing; the right to health and reproductive health; the right to equal treatment and non-discrimination; the right to a family; the right to life and to dignity and personal integrity; the right to privacy and the right to freedom of expression, association, participation and assembly. The LBQ women is also ‘left out[[7]](#footnote-7)’ of policies, contrary to the principle underlying the ***Sustainable Development Goals 2030*** of ‘leaving no one behind’. In addition, due to lack of information on the part of healthcare providers themselves, the community is deprived of access to healthcare and facilities in many cases. They are discriminated or mistreated by the health care providers when they get health treatment. The law does not address the need of sexual and reproductive health issues of sexual and gender minorities. There is a lack of information about sexual and reproductive health and rights in the community and the general public as well as among various stakeholders.

The ***Social Security Act[[8]](#footnote-8), 2075 (2018)*** of Nepal aims to provide support and allowances to vulnerable groups including senior citizens and helpless single women. However, despite the Act's efforts to address the needs of single women, there remains a significant gap in its inclusivity, particularly concerning single women within the gender and sexual minorities community. The Act defines "helpless single women" as those without a basis, income source, or property, who are incapacitated and have an income less than the specified threshold set by the Government of Nepal. It outlines provisions for the senior citizen allowance, specifying that Dalit and single women senior citizens, aged sixty and above, are entitled to receive the allowance. The Act introduces the "Helpless Single Woman Allowance," extending financial support to single women who meet specific criteria such as being widowed unmarried, or legally separated after the age of sixty. Despite these provisions, the Act falls short in recognizing the diverse relationships and households within the LBQ women. Many LBQ couples, living together for extended periods, may face challenges due to their relationships not being legally recognized by the state. Consequently, after the death of one partner, the surviving partner may find themselves ineligible for the single women allowance, a vital support provided by the government. That means there is need to revisit the definition of single women.

The ***Domestic Violence (Offence and Punishment) Act[[9]](#footnote-9) of 2009*** stands out as a significant legal measure in Nepal, directly addressing the critical issue of domestic violence, including instances of intimate partner violence. This legislation aims to provide protection and legal recourse for victims within domestic relationships. However, a notable limitation arises from its definition of "Domestic Relationship," which confines the scope to individuals related by descent, marriage, adoption, or those living together as family members in a shared household. Unfortunately, this definition fails to explicitly acknowledge or encompass the relationships between same-sex couples, thereby excluding the experiences of the sexual and gender minorities community. The Act is instrumental in prohibiting domestic violence and defines *"Sexual harm"* to include a range of actions that compromise an individual's safe sexual health. Furthermore, it establishes the provision of Service Centers for immediate protection and separate accommodation during the treatment of victims showcasing an effort to address the urgent needs of those affected by domestic violence.

Despite these commendable features, the Act's omission of explicit recognition for same-sex couples reveals a gap in legal protection for LBQ individuals facing domestic violence. This limitation underscores the ongoing challenges in fully incorporating international human rights obligations into the domestic legal framework of Nepal. Comprehensive legal reforms are imperative to align the law with evolving societal norms and international standards, ensuring that all citizens, regardless of their gender or sexual orientation, are safeguarded against intimate partner violence.

The pervasive issue of gender-based violence, impacting women and children in Nepal, has prompted the Government to take proactive measures aimed at providing comprehensive support. Recognizing the physical, sexual, and psychological effects of gender violence, the Government has established ***One-stop crisis management centers[[10]](#footnote-10)*** **(OCMCs)** in district-based hospitals under the Ministry of Health. These centers play a pivotal role in addressing the multifaceted challenges faced by girls and women affected by violence. The primary objective of these one-door crisis management centers is to streamline and simplify the process for victims seeking justice. Furthermore, the centers prioritize ensuring the full security of women and children affected by or at risk of gender violence. Security measures are implemented to create a safe environment where victims can access the support they need without fear or hesitation.

Despite the existence of OCMC to address gender-based violence, LBQ women may encounter barriers in accessing these services. A significant factor contributing to hesitation among LBQ women is the fear of confidentiality breaches. Many individuals within the LBQ community may lack awareness or assurance that their confidentiality will be maintained when sharing their experiences of violence at OCMC. Furthermore, there seems to be a lack of awareness among LBQ women about the violence register mechanism. Dispelling misconceptions about legal aid costs is paramount.

The toll-free helpline service, ***"Khabar Garaun 1145[[11]](#footnote-11),"*** is operated by the National Women Commission and serves as a crucial support system for individuals facing gender-based violence or violence against women. This helpline, available 24/7, offers a lifeline for those in need, providing assistance and guidance during moments of crisis. According to the **World Health Organization (WHO),** at least one out of three women worldwide experiences physical and sexual violence in her lifetime, often perpetrated by someone she is familiar with. By providing a reliable and confidential channel for reporting and seeking assistance, the helpline contributes to a safer environment for survivors, empowering them to speak out against violence.

Despite the existence of the toll-free helpline "Khabar Garaun 1145" operated by the National Women Commission, a significant challenge persists as many LBQ women remain unaware of its availability. Even among those who are aware, there is a prevailing sense of insecurity or hesitancy to share their experiences of GBV and IPV through this helpline. Instead, LBQ women often opt to report such issues directly to organizations specifically working for the rights of the LGBTI community. Similarly, in Nepal, the emergency contact number for the Nepal Police is 100. This hotline is dedicated to handling emergency situations and connecting individuals with immediate police assistance. People in distress or facing urgent situations can dial 100 to report crimes, seek help during emergencies, or request police intervention. The Nepal Police emergency hotline is a critical resource for public safety and plays a crucial role in responding promptly to various situations, including accidents, criminal activities, and other emergencies that require police attention. Having these provisions there is still lack of access to services because of safety; security and confidentiality concern most of LBQ women feel insecure to fill cases.

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