

# Nepal Takes a Step Toward LGBTQ Equality

[thediplomat.com/2023/05/nepal-takes-a-step-toward-lgbtq-equality](https://thediplomat.com/2023/05/nepal-takes-a-step-toward-lgbtq-equality)

Harsh Mahaseth, Dikshya Adhikari



On May 2, a landmark decision was handed down by a Division Bench of the Supreme Court of Nepal, comprising Justices Hari Prasad Phuyal and Tanka Bahadur Moktan. The court ordered the government of Nepal to officially recognize same-sex marriage, marking a significant stride toward equality in the country.

In addition to this historic ruling, the court directed the authorities to take action on a long-pending report that recommends the legalization of same-sex marriage. This report, commissioned by the Supreme Court in 2015, has remained unaddressed by the government until now.

The impetus for this legal battle came from Abhdeep Pokharel, a Nepali citizen, and his spouse Tobias Volz, who hails from Germany. As a gay couple, they filed a writ petition of mandamus and certiorari against the Home Ministry and the Department of Immigration (DoI) of Nepal. Their grievance centered on the denial of a non-tourist visa for Volz, a direct consequence of Nepal's lack of recognition for marital equality.

The couple's journey began on October 19, 2018, when they solemnized their marriage in accordance with German law. Their union was officially registered at the registration office in Malsch, Kreis Karlsruhe, Germany. However, when Volz applied for a non-tourist visa to Nepal on July 19, 2022, the application was summarily rejected due to the absence of legal recognition for same-sex marriage in Nepal. Pokharel's subsequent attempts to procure a marriage certificate from local authorities were met with refusal, citing existing laws that permit marriage solely between individuals of different genders.

Volz made another attempt to secure a visa on August 19, 2022, accompanied by a written petition and a copy of a significant court order from October 23, 2017. This order pertained to the case of Suman Pant v. the Ministry of Home Affairs, Department of Immigration (DoI), and others.

**Enjoying this article?** [Click here to subscribe for full access. Just \\$5 a month.](#)

The 2017 case involved Suman Pant, a lesbian petitioner from Nepal, who had entered into a court marriage with Leslie Melnyk on December 18, 2015, in Sacramento County, California, the United States. Upon arriving in Nepal, Melnyk applied for a non-tourist visa at the Department of Immigration, but her application was verbally denied. In response, Pant filed a writ petition seeking a mandamus order against the respondents. The petition requested that non-tourist visas be granted to the spouses of individuals belonging to gender and sexual minorities, including Pant herself, if they choose to obtain a non-tourist visa after their same-sex marriage. The petition further called for the prompt formulation and implementation of laws relating to this matter.

The Supreme Court Bench, in its order of mandamus, directed the Department of Immigration to grant a non-tourist visa to Melnyk. The bench emphasized that the Immigration Rules of Nepal do not require a foreign national seeking a non-tourist visa to be of the same or opposite gender to be eligible. The court's judgment explicitly stated, "If a foreign national claiming to be married to a Nepali citizen submits a marriage registration certificate and the Nepali citizen confirms the marriage in their visa application, then the issuance of a visa to the foreign national cannot be denied."

However, despite referencing the precedent set by Pant's case, Volz's application for a non-tourist visa was once again rejected. Consequently, the petitioners filed a writ petition seeking a mandamus or any other appropriate order to compel the respondents to promptly issue a non-tourist visa to Volz.

The Supreme Court, in the ongoing case, acknowledged that the petitioners had provided a marriage registration certificate attested by the German Embassy. This certificate confirmed their marriage, which was conducted and registered according to German law. As a result, the Department of Immigration's insistence on the submission of documents under the National Civil Code, 2017, and the National Registration Act was deemed unreasonable.

Drawing parallels with the Suman Pant case, the Supreme Court concluded that the legal issues at hand were similar. Consequently, the Department of Immigration was directed to grant Tobias Volz a non-tourist visa. The court strongly condemned the inappropriate and unlawful actions of the Immigration Department.

It further highlighted the presence of binary terminologies in various Nepali laws, which pose challenges for LGBTQ+ community members in asserting their rights. The court ruled that all discriminatory statutes, including those related to rape, marriage, and inheritance, should be amended to ensure equality. Additionally, the court emphasized that the country's failure to recognize same-sex marriages was a violation of the Nepali

Constitution. Volz was entitled to a visa under the rights guaranteed by Articles 16 (right to live with dignity), 17 (right to freedom), 18 (right to equality), and other provisions of the constitution.

With the recent ruling of the Supreme Court, Nepal is now on the cusp of joining the ranks of nations that embrace marriage equality. The decision not only represents a significant victory for Pokharel and Volz but also sets a powerful precedent for LGBTQ+ rights in the country. As Nepal takes steps toward progress and inclusivity, it is hoped that this ruling will foster a more equal and accepting society for all its citizens.

### **Not an Aberration: The Progress Seen in Nepal**

This is not the first time Nepalese courts have delivered progressive judgments. In the case Sunil Babu Pant v. Government of Nepal (2007), the Supreme Court of Nepal gave legal recognition to the third gender. In 2015, the court ordered the government to issue citizenship documents with a third gender category, acknowledging transgender individuals. This was followed by the passage of new civil and criminal laws in 2020, which explicitly prohibited discrimination based on sexual orientation and gender identity.

In other recent cases, the Supreme Court has provided interpretations that support equality and non-discrimination. In the case of Prem Kumari Nepali v. National Women's Commission, the court affirmed that individuals should be able to enjoy their constitutionally provided rights regardless of their sexual orientation. The court also indicated an acknowledgment of the lawfulness of same-sex relationships, stating that legal restrictions should not be placed on live-in relationships between individuals of the same sex.

**Enjoying this article? Click here to subscribe for full access. Just \$5 a month.**

As already mentioned, in the case of Suman Pant v. Ministry of Home Affairs, Department of Immigration, the court set a judicial precedent by granting a non-tourist visa to a foreign woman who was married to a Nepali woman, reaffirming the recognition of same-sex marriages. That stance was reiterated in this month's ruling as well.

Outside the courthouse, there have also been initiatives aimed at securing LGBTQ+ rights in Nepal. Various organizations, such as the Blue Diamond Society, Miti Nepal, and the LGBTIQ+ Network Nepal, are actively working to raise awareness and advocate for the rights of the LGBTQ+ community in Nepal. The Blue Diamond Society, in collaboration with the government, operates a health center in Kathmandu, providing free medical treatments, HIV testing, and counseling services to LGBTQ+ individuals. Pride celebrations have been held in Nepal since 2001 and have become an important annual event in the country's LGBTQ+ calendar.

Nepal is considered to be the most progressive country in South Asia when it comes to LGBTQ+ rights. These legal developments and court rulings reflect Nepal's commitment to advancing LGBTQ+ rights and creating a more inclusive society for all its citizens.

However, the government is still lagging behind and is slow to implement the changes sought by the progressive decisions of the courts. Sixteen years have passed since the Supreme Court instructed a government committee to study the issue of recognizing same-sex relationships, and eight years have passed since the committee encouraged the government to do so thoroughly and significantly. The recent judgment thus urges the government to implement past court orders recognizing same-sex relationships.

Clear recommendations were provided by the Government Committee in 2015 and the Supreme Court's careful examination of the proposed legal changes that will provide same-sex couples in Nepal equal rights. Nepal's government should swiftly evaluate and put into effect these recommendations, which include changing the existing laws to allow marriages between people of the same gender, ensuring the safety of same-sex couples, providing protection to the children of LGBTQ+ parents, and changing criminal and civil laws that criminalize "unnatural sex" and discriminate against sexual and gender minorities.