

Nepal Supreme Court's landmark ruling sets benchmark for LGBTQI+ rights

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Image



LGBTQI+ rights (Representational Photo)

The Supreme Court of Nepal has ruled that Rukshana Kapali, a Nepali transgender woman, should be legally recognized as a woman on all documents without the need for medical verification. Since a [2007 Supreme Court ruling](#), Nepal has allowed gender to be [listed](#) as “other” or “third gender” based on self-identification. However, the lack of a clear policy has led to issues. Trans individuals wanting to change their gender markers to “female” or “male” are often required to undergo surgery abroad and invasive medical assessments at home. Those seeking “other” markers also face these [unnecessary and humiliating procedures](#).

On December 27, 2007, the Supreme Court of Nepal issued a decision that has been called “arguably the single most comprehensive judgment affirming protections for gender identity anywhere in the world.” The decision in [Pant v. Nepal](#) found overwhelmingly in favor of the petitioners, a group of local lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights NGOs led by Sunil Babu Pant, president of the Blue Diamond Society, a sexual health and human rights organization founded in 2001. In addition to mandating that the government scrap all laws that discriminated based on sexual orientation or gender identity and establish a committee to study same-sex marriage policy, the court took the [unique approach](#) of establishing a third gender category based on the [Yogyakarta Principles](#).

The latest judgment by the Supreme Court aligns with the progressive rulings on sexual orientation and gender identity that has earned Nepal a positive global reputation on LGBT rights. It was largely assumed that “transgenders are third genders.” There was no understanding or acknowledgment of the fact that a trans woman may identify as a woman and a trans man as a man. Not everyone who does not fit into the normative definition of “man” and “woman” identifies themselves as “third gender.” Moreover, the terms “third gender” and “transgender” were interchangeably used.

Setting a precedent for trans rights

Kapali, a trans woman law student, has sued the government of Nepal over 50 times since 2021, pushing for rights-based legal recognition of gender identity. As a law student and human rights advocate, she has been traveling to several High Courts across Nepal to file cases on behalf of other trans people. All of the cases that have reached a verdict thus far have had a positive outcome, contributing to strengthening transgender jurisprudence in Nepal. Kapali, along with her peers, started working on lexicons and semantics. They began discussing words and their etymology and formation by writing books and creating resources about sexual orientation, gender identity, and sex characteristics.

While this recent judgment sets a precedent for trans rights, the order only applies to Kapali, meaning others will have to petition courts to be legally recognized according to their gender identity. However, it does expand the progressive scope of LGBTI rights in Nepal as it now becomes a precedent that courts are expected to follow in future cases.

During her fight for equality, Kapali said: “*Nepal got a lot of credit for instituting the third-gender option on citizenship certificates, but it is not implemented consistently, and it does not uphold the rights of people who identify as women and men.*” After the victory, Kapali told The Himalayan Times: “*I am very glad and happy this verdict has finally put an end to the discrimination and stigmatization I faced everywhere I went. My life is going to be easy from now on.*”

The case was decided by a two-judge bench, comprising Chief Justice Bishowambar Prasad Shrestha and Justice Kumar Chudal. After listening to the petitioner's contention, the bench emphasized that Kapali, despite her gender identity, is a citizen of Nepal and thus entitled to every constitutional right, including education. The court highlighted the Individual Privacy Act, 2015, particularly Section 3, regarding the privacy and personal life of a person, and Section 11, addressing the right to privacy, the right to be forgotten, and the right to erasure. Justice Chudal, emphasizing the definition of transgender and referring to the case of Bostock v. Clayton County and the Yogyakarta Principles, delivered the judgment in favor of the petitioner.

Implementing third gender category

The state's refusal to record a person's self-identified gender identity on official documents touches, or very nearly so, the core of one's sense of self. Such an intrusion arguably violates the right to privacy and treats differently those whose gender identity

does not correspond with the sex they were assigned at birth, without a reasonable basis, thus violating the right to freedom from discrimination. Official acknowledgment has positive implications for other human rights. Although the lack of accepted identity documents should not preclude the enjoyment of other rights, identification is often required to attend school, hold a job, open a bank account, receive medical care, vote, and conduct many other aspects of daily life. The lack of legal recognition can therefore lead to infringements on the rights to education, work, an adequate standard of living, the highest attainable standard of health, and political participation, among other rights. It can increase the risk of exploitation and impede the right to freedom of association.

Implementing a third-gender category is not the only way to legally recognize and protect gender identity. Nepal, through its judgments on LGBT rights, has been ahead of many other countries. Nepal made history with its 2007 judgment, becoming the first South Asian nation to formally register same-sex marriage, with a trans woman and a gay man legally marrying in the Lamjung district. It also passed affirming laws regarding sexual orientation and gender identity, including the legal recognition of a third gender over ten years ago, placing Nepal ahead of many other countries. This precedent thus marks a landmark judgment by the Supreme Court of Nepal and will be recognized as a "beacon of hope" for LGBTQI+ rights. These court filings also highlight how each individual must seek a judicial remedy if they wish to change their name and gender marker.

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