

## The new constitution of Nepal and LGBT human rights

September 17, 2015

After almost eight years of deliberations and often bitter debate, the Constituent Assembly (parliament) of Nepal overwhelmingly endorsed a groundbreaking new constitution on September 16. The constitution will come into force on September 20 when President Ram Baran Yadav officially promulgates it in a ceremony at parliament.

Nepal's new constitution is the first in Asia to explicitly mention the human rights of lesbian, gay, bisexual and transgender (LGBT) people. Nepal now joins a handful of countries around the world such as South Africa (1996) and Ecuador (1998) that provide protections for LGBT people in their national constitutions.

This is Nepal's first constitution as a federal republic following the dissolution of the 239-year-old monarchy by a parliamentary vote in 2008. It contains several articles that enshrine protections and rights for LGBT people.<sup>1</sup>

**Article 12** states that citizens will be allowed to choose their preferred gender identity on their citizenship document. The choices available are male, female or other.

**Article 18** states that gender and sexual minorities will not be discriminated against by the state and by the judiciary in the application of laws. It further adds that the government may make special provisions through laws to protect, empower and advance the rights of gender and sexual minorities and other marginalized and minority groups.

**Article 42** lists gender and sexual minorities among the groups that have a right to participate in state mechanisms and public services to promote inclusion.

The groundwork for this constitutional breakthrough was laid by a landmark verdict of the Supreme Court of Nepal in December 2007. The Court had responded to [a case filed by a group of local LGBT](#)

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<sup>1</sup> Unofficial translation from the original Nepali text:

**(Article 12) Citizenship based on lineage and gender identity:** Each citizen shall be provided with Nepali citizenship certificate based on lineage of the mother or father along with gender identity.

**(Article 18) Right to equality:** (1) All citizens shall be equal before the law. No person shall be denied the equal protection and benefit of the laws.

(2) There shall be no discrimination in the application of general laws on grounds of religion, race, origin, caste, tribe, gender, sexual orientation, physical conditions, health conditions, physical impairment, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology and such other matters.

(3) The state shall not discriminate among citizens on grounds of religion, race, origin, caste, tribe, gender, sexual orientation, physical condition, physical impairment, health conditions, matrimonial status, pregnancy, economic condition, language or geographical region, ideology and such other matters.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the poor, women lagging behind socially and culturally, Dalits, Adibasi (indigenous groups), ethnic groups, Khas Arya, Madhesi, Tharus, peasants, laborers, excluded groups, Muslims, backward classes, minority groups, marginalized groups, communities on the verge of extinction, youth, children, the elderly, gender and sexual minorities, people with physical impairment, physically incapacitated and the helpless, and the citizens of backward regions.

**(Article 42) Right to social justice:** (1) Socially backward women, Dalits, Adibasi, Janjati, Khas Arya, Madhesi, Tharu, minority groups, marginalized groups, Muslim, backward classes, gender and sexual minorities, youth, peasants, laborers, the oppressed and the citizens of backward regions, shall have the right to employment in state structures and public service on the basis of the principle of inclusion.



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[activists](#) by issuing a ruling that called on the government to give equal rights to sexual and gender minorities, recognize a “third gender” identity, and study the possibility of legalizing same-sex marriage.

Marriage is not defined in the new constitution. The existing civil code will need to be revised to be brought into line with the new constitution and for marriage equality to be introduced. No timeline has been set for this yet.