

# **Socio-Political Discourses on Sexual Minorities in Nepal**

A Dissertation Submitted

To

**Sikkim University**



In Partial Fulfilment of the Requirements for the  
**Degree of Master of Philosophy**

By

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## DECLARATION

I hereby declare that the dissertation entitled “**Socio-Political Discourses on Sexual Minorities in Nepal**” submitted to **Sikkim University** in partial fulfillment of the requirements for the degree of **Master of Philosophy** is my original work. This dissertation has not been submitted for any other degree of this university or any other university.

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## Certificate

This is to certify that the dissertation entitled “**Socio-Political Discourses on Sexual Minorities in Nepal**” submitted to **Sikkim University** for the award of the degree of **Master of Philosophy** in International Relations, embodies the result of bona fide research work carried out by Saurabh Syangden under my guidance and supervision. No part of the dissertation is submitted for any other degrees, diploma, associate-ship and fellowship. All the assistance and help received during the course of investigation have been deeply acknowledged by him.

**Dr. Sebastian N.**

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**“Socio-Political Discourses on Sexual Minorities in Nepal”**

Submitted by Saurabh Syangden under the supervision of Dr. Sebastian N. of the Department of International Relations, School of Social Sciences, Sikkim University, Gangtok 737102, INDIA

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*Saurabh Syangden*



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# CHAPTER I

## Introduction

### 1.1 Introduction

This study focuses on the issues of subjugation of sexual minorities in Nepal. It would also look into how the societal constructs of the Nepal society addresses the sexual minorities. This study is an attempt to understand the interrelation between the sexual minorities, state politics and social institutions from a post-modern/post-structural feminist and queer theory lens. The major questions addressed in this study are how does queer theories and post-structural feminism problematize the marginalization of sexual minorities? How does the legal and political institutions respond to the questions of LGBTQ issues in Nepal? What role does social institutions of culture play in understanding the LGBTQ community in Nepal?

In general debates, the terms “gender” and “sex” are used interchangeably and thus incorrectly. We are born, assigned a sex, and sent out into the world. For many people this is cause for little, if any dissonance<sup>1</sup>. Yet biological sex and gender are different; gender is not inherently nor solely connected to one’s physical anatomy. Biological Gender (sex) includes physical attributes such as external genitalia, sex chromosomes, gonads, sex hormones, and internal reproductive structures. At birth, it is used to assign sex, that is, to identify individuals as male or female. Gender on the other hand is far more complicated. It is the complex interrelationship between an individual’s sex (gender biology), one’s internal sense of self as male, female, both or neither (gender identity) as well as one’s outward presentations and behaviours (gender expression) related to that perception, including their gender role (Hines and Sanger, 2010).

Western culture has come to view gender as a binary concept, with two rigidly fixed options: male or female, both grounded in a person’s physical anatomy. When a child is born, a quick glance between the legs determines the gender label that the child will carry for life. Biological gender occurs across a continuum of possibilities. Binary model produced through a solely physical understanding of gender, a far richer tapestry of biology, gender expression, and gender identity intersect in a

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<sup>1</sup> [www.genderspectrum.org.510-567-3966](http://www.genderspectrum.org.510-567-3966)

multidimensional array of possibilities (Mattson, 2017). The gender spectrum represents a more nuanced, and ultimately truly authentic model of human gender<sup>2</sup>. Upbringing, culture, peers, schools, community, media, and religion are some of the many influences that shape our understanding of this core aspect of self (Brill and Kenny, 2016). How we learned and interacted with gender as a young child directly influences how you view the world today. Gendered interactions between parent and child begin as soon as the sex of the baby is known. In short, many aspects of gender are socially constructed, particularly with regard to gender expression<sup>3</sup>.

Like other social constructs, gender is closely monitored and reinforced by society. Accepted social gender roles and expectations are so entrenched in our culture that most people cannot imagine any other way (Goldberg, 2016). The term gender role refers to society's concept of how men and women are expected to act and how they should behave. These roles are based on norms, or standards, created by society. As a result, individuals fitting neatly into these expectations rarely if ever question what gender really means. They have never had to, because the system has worked for them (ibid).

“Gender-expansive” is an umbrella term used for individuals that broaden commonly held definitions of gender, including its expression, associated identities, and or other perceived gender norms, in one or more aspects of their life (Hines and Sanger, 2010). These individuals expand the definition of gender through their own identity and/or expression. Some individuals do not identify with being either male or female; others identify as a blend of both, while still others identify with a gender, but express their gender in ways that differ from stereotypical presentations. A gender-expansive person's preferences and self-expression may fall outside commonly understood gender norms within their own culture; or they may be aligned with them even as one's internal gender identity doesn't align with the sex assigned at birth (Goldberg, 2016).

It is here in that the term sexual minorities arrives in. A Sexual Minority is basically a group whose sexual identity, orientation or practices differ from the majority of the surrounding society. Sometimes, the term third gender is also used. The third gender is a concept in which individuals are categorized, either by themselves or by society,

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<sup>2</sup> [www.genderspectrum.org.510-567-3966](http://www.genderspectrum.org.510-567-3966)

<sup>3</sup> [www.genderspectrum.org.510-567-3966](http://www.genderspectrum.org.510-567-3966)

as neither man nor woman. It also describes a social category present in those societies that recognize three or more genders. The term third is usually understood to mean "other" and the term sexual minority is primarily used to refer the LGBTQ (Lesbian, Gay, Bisexual, Transgender and Queer) (Russell, 2016). When individuals or groups do not "fit" established gender norms they often face stigma, discriminatory practices or social exclusion – all of which adversely affect health. It is important to be sensitive to different identities that do not necessarily fit into binary male or female sex categories.

## **1.2 Gender and International Relations**

The discipline of International Relations (IR) no longer revolves around the traditional issues of inter-state wars, security and weaponry – it has grown to include matters such as ethnic identity, economy and civil society. Further, the post-Cold War era has witnessed the growth of the Feminist theory of International Relations, growing largely in opposition to the Realist Theory which is seen as essentially patriarchal and narrow. Feminism is the discipline responsible for 'putting gender on the map', and is most concerned with questions of gender in international relations. Feminists hold divergent approaches to the study of gender which relate to differing aims.

The most important point to note is feminists believe that gender is malleable (Zalewski, 2013). The subject of gender and sexuality is intricate and complex to the extent that it opens up a new Pandora's Box of troubles whenever it is tried to be tamed under one specific theory. Feminism have since a very long time dealt with the issue of sexuality but with the emergence of transgender and gender variant groups, criticisms towards the naturalizing tendencies of gender binaries also came into being. Queer theory, for that matter have come into existence and it 'developed as an interrogation and deconstruction of the multiple discursive productions of sexuality, seeking to denaturalize the assumed connections between sex, gender and desire' (Cossman, 2012: 19). But it must be noted that both feminism and queer theory problematise and questions the traditional and hegemonic notions of understanding sex and gender. Moreover, the emergence of queer activism not only pointed towards the loop holes of previous discourses around sexuality but it also brought dynamism within the study of sexuality.

Feminism as a theory in social science is dynamic and multi-faceted, it is not a single unit. In that same way, the study of sexuality and gender within feminism is also dynamic and sheltering diverse view points and understandings. The radical feminist approach towards transgenderism was not a welcoming one, in the works of MacDonald (1998), Janice Raymond (1979), etc. the hostility towards alternative sexualities could be observed. However, the coming of feminist writings in different fields of enquiry gave an interesting and comprehensive turn to the study of sexualities altogether. Hollibaugh (1989), Rubin (1989), Vance (1989), Sedgwick (1990), etc. could be named as one of the prominent ones in that category. Moreover, the works of Judith Butler (1990, 2004) made the study of sexuality take a leap forward by questioning and problematizing the very epistemology of the term sex and gender.

Judith Butler used Michel Foucault as a resource “to provide a discursive account of the construction of gender identities that include the body in a nonessentialist way” (Youngs, 2004: 30). Foucault has been influential to post-structuralist feminists because he proposes that humans are produced as subjects by the power of discourse, a notion which can be directly related to feminist studies of gender (Foucault, 1980). Furthermore, post-structuralist feminists such as Judith Butler would argue that characteristics such as strength, rationality, and independence are associated with masculinity, while weakness, irrationality, and dependence are associated with femininity based on an understanding of binary oppositions; each term’s meaning is dependent upon the other, so, they are not accorded equal value, and one term becomes dominant (Hooper, 2001; Steans, 2013). The term Queer Theory was first used by Teresa de Lauretis (1991) in an article called Queer Theory: Lesbian and Gay Sexualities, queer theory made a dramatic appearance in the academy during the 1990s, to make sense ‘of an already deeply entrenched set of questionings and abrasions of normality’ (Hall, 2003: 54). For many theorists, there was an urgent need to understand why there are some differences (i.e. race, sexuality, etc.) that ‘matter’ more than others (Butler, 1993).

The politics surrounding what is generally described as sexual orientation and gender identity have received an astounding degree of public and international attention in recent years. Sexual rights have become points of contention, eliciting domestic culture wars and international diplomatic rows. The status of sexuality politics in

international relations has not only been elevated, but also impacted apparently sexual orientation and gender identity unrelated policies (such as foreign policy, health care, or labour markets) and thus created new avenues for looking at the construction of conventional IR concepts (Thiel, 2014).

Sexuality politics and the queer scholarship connected to it arrived late on the theoretical scene in part because sexuality and gender initially were anchored in the private, rather than the public, realm (ibid). IR theoretical schools of the critical persuasion, such as feminism, post-colonialism, or critical theory expressed queer thinking early on and were essential to the incipient queer theoretical progress in IR. The feminist emphasis on positionality and intersectionality as subjective signifiers, post-colonial assumptions about structural marginalization, and critical theories contesting the normativity of political ideologies all are fundamental concepts of queer theory, no matter if in IR or other disciplinary fields (ibid).

Queer Theory emphasizes the fluidity of sexuality – or better, sexualities – and questions established norms, categories, and statuses with a special focus on challenging sexual (hetero/homo), gender (male/female), class (rich/poor), and racial (white/non-white) categories, and international binary orders (liberal-democratic/premodern authoritarian). It facilitated to visibilize the marginalized sexualities and make the study more inclusive and worthwhile (Thiel, 2014). Now, Queer theory has emerged from the moment when gay/lesbian studies started paying attention to the social construction of the categories of normative and deviant sexual behaviour. As a scholarly undertaking, queer theory constitutes of “any form of research positioned within conceptual frameworks that highlight the instability of taken-for-granted meanings and resulting power relations” (Nash & Browne, 2012: 4). Yet, based on its substantive sexual orientation and gender identity focus and its transgressive approach towards conventional academic knowledge, queer IR scholarship is now more strongly emerging in IR (Thiel, 2014).

Nepal is a country with a rapidly changing social and political landscape, as modern ideas infiltrate an age-old traditional lifestyle which has structured society for centuries. Some of the most controversial of these ideas are those which challenge social norms, specifically gender roles and traditional family structure. An examination into the lives of sexual gender minorities demonstrate the incredible

hardships they must overcome due to discrimination and stigma. The sexual minorities face challenges of harassment for working, expectation of marriage, and the rigid gender roles and behaviours which they are expected to conform to. They struggle against intense social stigma, the core of which is rooted in their rejection of gender norms of a heterosexual, patriarchal society. However, as globalization brings individualistic ideals and examples of other lifestyles, social attitudes toward sexual and gender minorities are gradually changing. All in all, this study serves to explore life experiences of sexual and gender minorities in Nepal and to examine the relationship between legislature, social institutions and changing lives.

### **1.3 Survey of Literature**

As already discussed, this research is mainly a theoretical one and therefore would be based upon a comprehensive literature review to build its arguments and discussions. For the convenience of the study, the literature available in the concerned area is divided into three broad categories, which are: the first group of literature will deal with the theoretical foundations of the research. It will basically include the works discussing the construction of gender and sexuality from the point of view of the post-modern feminism and queer theory. The second group of literature would include the works on sexuality dealing specifically with the Nepal case. And the last group of literature would include the reports and online blogs which have valuably contributed to the enrichment of the study. The first group of literature being books and articles related to theoretical foundation of the study.

The book *Gender Trouble* (1990) by Judith Butler. Judith Butler introduces gender as performance. She highlights that gender was associated with social construction and sex with biological innate. Gender identity is just performance, and that is constituted by the everyday expressions of speech, utterance, gestures, dress codes and representations. She described all essentialist concepts of sex and gender, a form of the heterosexist oppression because heterosexuality is a norm in society and people are judged on the basis on their sexual identity. This was an attempt to move beyond the sex/gender distinction that had become central to feminist theory during the 1970s and early 1980s.

Sandy Stone's essay "*The Empire Strikes Back: A Posttranssexual Manifesto*" confronts the ways in which both the medical complex and feminism had been used as

a tool for the regulation of gender/sex systems and the management of Trans bodies. The book raises fundamental questions about what an insurrectionary Trans feminism might look like and how it might be theoretically developed. It is successfully able to break the rigidity of gender as something fixed and unchanging.

Sally Hines “*Transforming Gender: Transgender practices of identity, intimacy and care*”. In this book the author addresses the changing government legislation concerning the citizenship rights of transgender people. She examines the impact of legislative shifts upon transgender people's identities, intimate relationships and practices of care and considers the implications for future social policy. The book encompasses key approaches from the fields of psychoanalysis, anthropology, lesbian and gay studies, sociology and gender theory, and evoke an understanding on sexuality that was still considered to be a stigma and abnormal in the larger society

*Bodies That Matter: On the Discursive Limits of Sex* by Judith Butler– This book asks a number of penetrating and foundational questions about how the idea of gender has been socially constructed. She offers a brilliant reworking of the body, examining how the power of heterosexual hegemony forms the "matter" of bodies, sex, and gender. Her aim is to rethink the difference between gender and sexuality in terms of a set of non-causal relations that can somehow accommodate the inter-implication of gender and sexuality without reducing either aspect to the other and to establish their constitutive inter-relationship.

*Third Sex, Third Gender – Beyond Sexual Dimorphism in Culture and History* (1994) by Gilbert Herdt. This text demonstrates that one should not reduce the richness and significance of sex/gender categories and roles to a one-dimensional ideology of sexual dimorphism. This book goes through a historical study (across time and space) of the various sexes and their movements. A proper study and understanding of cultural and historical contexts in which the third sex has evolved has been done. This book provide a very in depth knowledge about the queer groups specially the eunuchs.

Besides books, theoretical understanding is also developed by the insights of several articles too that deals with the issues of gender and sexuality. Some of these important articles are “*Critical Identities: Rethinking Feminism through Transgender Politics*” by Eleanor MacDonald, “*Transgender Liberation: A Movement Whose Time Has Come*” by Leslie Feinberg, “*The Third – A Hindrance to Diversity*” by Lena Eckert.

These articles are dedicated to the understanding of gender complexities and examine the changing nature of sexuality with fluidity as a fundamental trait of the same. All these articles attempt to accommodate the “others” by breaking the barriers of heteronormativity and state centric definition of sexuality. *Queer Theory and Feminism* by Kathy Rudy explains about the emergence of queer theories and also explains about the inter connection between feminist theories and queer theories. *I don't even know what gender is'*: a discussion of the connections between gender, gender mainstreaming and feminist theory by Marysia Zalewski discusses the connections between gender, gender mainstreaming and feminism.

The second group of literature contains the books and articles which is Nepal specific and deals with issues and challenges faced by the sexual minorities within the Nepalese society. One of the main gap in this group of literature was that there were rarely any books on sexual minority Nepal specific. The essay *Gender and Sexuality in Nepal: The Experiences of Sexual and Gender Minorities in a Rapidly Changing Social Climate* by Sophia Greene highlights about the conditions of sexual minorities in Nepal with focus on patriarchy system. *Socio-economic and Demographic Characteristics of Excluded Group: A study of Third Gender People in Western Development Region of Nepal* by Prof Bishow Kalyan Parajuli explains about the socio-demographic status of Third Gender (LGBTI) people, their risk taking behaviour and social exclusion and inclusion efforts. This study is based on the sexual minorities residing in Pokhara, Butwal and Bhairahawa region. The article *Nepal's First Gay MP Speaks- Nation's two largest political parties embrace LGBT Rights* by Doug Ireland discusses about the changes in the constitutions and legal systems for LGBTQ people. The article *Homosexual Movement in Nepal* by Kedar Maharjan deals with the history of development of queer movement in Nepal.

The third group of literature are the reports published by various organizations and the online blogs like the *The Queer Chronicle* which is one of the most well maintained and informative blogs owing to the study. Besides, there are also other documents issued by the United Nations which are very much insightful and helpful for this research. *UN HUMAN RIGHTS COUNCIL REPORT: Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity*. This report draws on recent findings of UN human rights bodies, regional organizations and non-governmental organizations, as well as information submitted by



Governments. It details some important recent advances in the protection of the rights of lesbian, gay, bisexual, transgender (LGBT) and intersex people – including the introduction of new anti-discrimination and hate crime laws, legal recognition of same sex relationships, protection of intersex children, and changes that make it easier for transgender people to have their gender identity legally recognized. *BEING LGBT IN ASIA: NEPAL COUNTRY REPORT A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society 2014* – This report reviews the legal and social environment for LGBT people and organizations in Nepal. The report LGBT Global Development Partnership BRIDGES TO JUSTICE: CASE STUDY OF LGBTI RIGHTS IN NEPAL presents about the rights and laws of LGBT people in Nepal.

The understandings developed through a theoretical foundation will be applied to understand the lived experiences and everyday life of sexual minorities in the country. The research will also attempt to understand the role of organizations which have given a platform to voice against the marginalization of sexual minorities in the country.

#### **1.4 Rationale and Scope of the Study**

The discourses surrounding sexuality have undergone through many significant changes since the last two decades. The term gender which basically means the socially constructed characteristics of masculine and feminine, differing from biological sex, is further deconstructed by postmodern feminism and queer theories to expose the rigidity and exclusionary nature of the same. Individuals were to fit themselves within the two rigid categories of masculine and feminine. It dint have space for the people who dint fall under it. Queer theories along with postmodern feminism are, thus, able to break the gender stereotypes and make it more inclusionary and accommodating in nature.

Nepal has been chosen specifically as it is the only country in South Asia that legalises same-sex sexual activity among the LGBTQ community and is pro-forward for the third gender community. Gender and sexuality in Nepal has always been at the crux of a societal revolution, as the deeply ingrained patriarchal society framed against the emergence of new ideas results in a shifting social climate in which old and new clash. As modernization and economic development permeate Nepal, they

bring with them individualistic ideals which gradually infiltrate society, altering long held social attitudes toward marriage, gender, and sexuality. However, despite societal change and even changing legislation for the rights of members of the LGBTQ community, this minorities still face overwhelming discrimination and prejudice in Nepali society.

In this backdrop, this study explores the life experiences of sexual and gender minorities, by understanding their daily struggles as well as investigating how society has changed in recent years in regards to social attitudes toward gender and sexuality. It would also examine the legal rights and political establishments of Nepal. This dissertation would provide an understanding about how culture and religion plays an important part in Nepal in perceiving the third gender community.

### **1.5 Objectives of the Study**

1. To develop a theoretical understanding on the issues of sexual minorities.
2. To examine the development of legal rights and political system of Nepal vis-a-vis the LGBTQ.
3. To analyse the lived experiences and everydayness of sexual minorities.
4. To understand the role of socio-cultural institutions, media and NGO in addressing issues related to LGBTQ.

### **1.6 Research Questions**

1. How does queer theories and post-structural feminism problematize the marginalization of sexual minorities?
2. What are the legal laws and political institutions for LGBTQ issues in Nepal?
3. How heteronormative constructs of the Nepalese society addresses the sexual minorities?
4. How does social institutions approach the LGBTQ community in Nepal?

### **1.7 Methodology**

The proposed study is more theoretical in nature. In this study data are collected from both primary and secondary sources. The proposed study follows a qualitative orientation of research. There would also be in- depth interviews so as to gain the views of scholars, LGBTQ members and general public. To set the background of the study and identify the knowledge gap, the study shall be based on a comprehensive

review of literature done in the field of gender and sexuality with special reference to queer theories and post structural feminism.

## **1.8 Chapterisation**

Leaving aside a brief introduction (chapter 1) and conclusion (chapter 5), there would be three main chapters.

### **Chapter 2. Understanding Sexual Minorities: Conceptual and Theoretical Aspects**

This introductory chapter provides the theoretical understandings of sexuality under different paradigms and then seek to comprehend those understandings in the analysis of the sexual minorities in Nepal. This chapter would examine the concepts from post structuralism and queer theory perspective.

### **Chapter 3. Political System and LGBTQ rights in Nepal**

This chapter will provide an in-depth knowledge about the rights and laws of the sexual minorities. It will focus on the very historical development of rights of the LGBTQ community It will also give details about the various incidents where violence has been committed towards the LGBTQ community.

### **Chapter 4. Social Institutions and Sexual Minorities in Nepal**

This chapter would focus on the social institutions of Nepal such as religion and culture. Nepal being a Hindu majority country, this chapter then shall focus on the various other religions and their views on homosexuality. This chapter will explore various facets of discrimination and exclusion of sexual minorities on different aspects of individual, familial and societal levels. This chapter shall also describe in detail the role of media and NGO especially BDS. This chapter will also provide about the experiences of LGBT individuals.

## CHAPTER II

### Understanding Sexual Minorities: Conceptual and Theoretical Aspects

#### 2.1 Introduction

This dissertation entitled, “Socio-Political Discourses on Sexual Minorities in Nepal” attempts to examine the issue of subjugation of sexual minorities in the light of emerging theoretical understandings. The study is organized with special reference to Nepal. This chapter tries to encapsulate the theoretical understandings of sexuality that is viewed differently under different paradigms and then seek to comprehend those understandings in the analysis of sexual minorities in Nepal. It also seeks to analyse how the concepts of gender and sexuality are naturalized in the society at large. By examining the concepts from postmodern/ post structuralism and queer perspective, this chapter tries to deconstruct the established and given notions of heteronormativity.

Imposition of ideas is a concrete reality in the present society, be it in the name of law, morality or culture. We are constantly told to behave in a definite manner, think and even desire in a pre-determined manner. From the very moment we take birth, culture and laws are imposed upon us. Imposition has become an integral and unquestionable part of our daily lives. From a young age, children are commonly subjected to conditioning for a particular mentality until it is ingrained as an often permanent, ordinary and habitually enforced social norm<sup>1</sup>. To act or even think against it, is labelled as a sin or something which cannot be called normal. It is more termed as something abnormal. This happens because; the emergence of any new paradigm is always viewed as a challenge to the existing dominant paradigm of the society. In order to contain such challenge, restrain upon the alternative paradigm becomes necessary which results in the forms of law, civil code, etc., that are needed to be followed in one’s daily conduct in a society.

The same holds true ground for the existing sexual minorities around the world in general. Morality as a norm is ingrained in every individual and whoever dares to go

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<sup>1</sup><https://www.wattpad.com/98513884-gender-studies-negative-effects-of-heteronormative>

against the given sets of rules considered within the broad set of morality are considered to be the ‘threats to morality’ (Narain and Bhan, 2005:3). The larger picture here is the fact that whoever dominates the society creates norms, rules and regulation which are in adherence to their vision of right and wrong and penalize those who fall outside those rules (ibid). Thus, the individuals who try to assert their identity as different from the ones that are given by the society; they are discarded, discriminated and looked down upon as abnormal. In this regard, sexual minorities are the worst sufferers. The supreme heteronormative structure of the society attached with the higher moral purpose of clubbing sexuality with procreation have always been able to shatter the desires are crushed the voices of sexual minorities in their own ways (ibid).

The term sexual minorities, in this study, would mean all the different sexual identities which do not fall within the hegemonic categories of man and woman and are those who deviate from the overarching structure of heterosexuality as the only dominant way of organizing sexuality.. Further, the UNESCO report on Human Rights Protection for Sexual Minorities in Insular South Asia: Issues and Implications for Effective HIV Prevention (2011:8) holds, “The term “sexual minority”, or “sexual minorities”, refers to people whose sexual orientation or practices differ from the dominant heterosexual paradigm. *Gender Equity and Resource Center*, in 2013, defined sexual minority as “members of sexual orientations or who engage in sexual activities that are not part of the mainstream. It refers to members of sex groups that do not fall into the majority categories of male or female, such as intersexuals and transsexuals” This term encompasses sexual orientation and gender identity, including those who identify as being lesbian, gay, bisexual, transgender or intersex, or are MSM or women who have sex with women”.

In short, sexual minorities are the ones who challenge the dominant paradigm of sexuality and has shaded away the boundaries of male and female as binaries<sup>2</sup>. This study aims at understanding the issue of sexual minorities in a more theoretical manner for the purpose of which it is appropriate to take the term sexual minorities as

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<sup>2</sup>Of course the term ‘sexual minorities’ shelters diverse sexual identities, everyone of which has its own distinct features and the risk of clubbing all these identities into one category has its own risk (Eckert, Lena. 2006).

a category in the sense that it does not recognize itself with the dominant paradigm of sexuality.

The social set up which we live in today is more a unique blend of norms, laws and institutions which have been established due to socialization process. Thus, whatever is left out unnamed becomes unsocial and abnormal. However what one fails to recognize is that there are some ideas which are the dominant strand of thought and that of someone who holds the power which plays behind this social setup. The structure of heterosexuality is nothing but one of such ideal creation of the state and society which represent someone's thinking at a particular juncture of time.

Heteronormativity is “the myriad ways in which heterosexuality is produced as a natural, unproblematic, taken-for-granted phenomenon” (Kitzinger, 2005: 21). Heteronormativity sets up unconscious and automatic assumptions about heterosexuality as the norm and all other types of sexual experience as abnormal. Heteronormativity, or the normalization of heterosexuality, exists across multiple social domains. Elia (2003) and Hegarty, Pratto, and Lemieux (2004) described how social institutions often implicitly reproduce assumptions about heterosexuality as the norm which perpetuates privilege for those who ‘fit’ into the prescribed mould of heterosexuality. However, as Jackson (2006: 12) wrote, “normative heterosexuality regulates those kept within its boundaries as well as marginalizing and sanctioning those outside them”. In other words, heteronormativity affects individuals regardless of sexual orientation, proscribing and requiring different kinds of actions and experiences based on gender, and creating categories of acceptable and unacceptable groups of people (Hegarty, Pratto, and Lemieux, 2004).

Rich's (1980) conceptualization of compulsory heterosexuality was, as Jackson (2006) noted, an important forerunner of the concept of heteronormativity; Rich questioned the practice of accepting heterosexuality as a normal, expected result of development – of never questioning how one develops a “preference” for an opposite sex partner, while arbitrarily pathologizing and questioning the development of those who are drawn to same sex partners (Rich, 1980: 633). Eliason's work provides empirical evidence consistent with these theories of heteronormativity; she found that most heterosexual students in her study demonstrated foreclosed sexual identities

(Marcia, 1987) in that they had merely accepted the identities “imposed on them by society, religion, their gender, or their parents’ expectations” (Eliason, 1995: 832).

The underrepresentation and discrimination against nonconforming sexual relationships in politics, society, the media, and other areas has long been a challenge for those of queer sexual orientations and identities. Over the years, social theorists have debated the cause of this queer discrimination. One considered explanation is the idea that heterosexuality is normal, superior orientation as opposed to homosexuality and nonconforming orientations. This concept can be defined by the term heteronormativity, which is an expression coined by social theorists to clarify debate related to the issues of gender and sexuality, it is a cause of negative effects, such as discrimination, against the queer society<sup>3</sup>.

Heteronormativity is a system of hierarchical binaries prevalent in our society. This concept systemizes the binaries of both gender identity and sexual orientation, deeming heterosexuality as the opposite and superior orientation as opposed to homosexuality and the strictly male-gendered and masculine individual in a heterosexual or less approved homosexual as the opposite and superior to the female-gendered and feminine person. As a result, no room is allowed for those of more variable gender identity, as well as those with intersexual traits, in the heteronormative system (Gray, 2011). Hence, the heteronormative system does not adequately encompass all aspects of gender identity, therefore excluding the queer sexual orientations that hinge on those noncompliant gender identities.

The exclusion of these identities in society causes their rejection, since they are omitted from the “normal” and thereby more acceptable mentality that current culture is socially compliant to (ibid). Conversely, the gender spectrum is a system that subjects gender identity to gradation instead of painting them as an opposing binary, resulting in the inclusion of the previously mentioned variable gender identities, which are based on both anatomical variability and psychologically rooted gender expression<sup>4</sup>. The gender spectrum opposes heteronormative mentality since the spectral genders do not fit the roles required for strictly heterosexual or homosexual relationships. Instead, the gender spectrum recognizes a more diverse range of

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<sup>3</sup><https://www.wattpad.com/98513884-gender-studies-negative-effects-of-heteronormative>

<sup>4</sup><https://www.wattpad.com/98513884-gender-studies-negative-effects-of-heteronormative>

sexualities that incorporate the non-binary gender identities unrecognized by the binary system<sup>5</sup>.

The omission of queer identities and sexualities due to heteronormativity is evident in many spheres of representation, and are a key enforcer of the heteronormative mentality. From a young age, children are commonly subjected to conditioning for a heteronormative mentality until it becomes permanent (ibid).

For example, binary gender roles are assumed as soon as infants are born. The products necessary for them, such as clothes and toys, are assigned qualities stereotypically associated with male and female requirements for heterosexuality. Role learning starts with socialization at birth. Even today, our society is quick to outfit male infants in blue and girls in pink, even applying these colour-coded gender labels while a baby is in the womb. One way children learn gender roles is through play. Parents typically supply boys with trucks, toy guns, and superhero paraphernalia, which are active toys that promote motor skills, aggression, and solitary play. Girls are often given dolls and dress-up apparel that foster nurturing, social proximity, and role play<sup>6</sup>. Studies have shown that children will most likely choose to play with “gender appropriate” toys (or same-gender toys) even when cross-gender toys are available because parents give children positive feedback (in the form of praise, involvement, and physical closeness) for gender-normative behaviour (Caldera, Huston, and O’Brien 1998). When a child plays house, they automatically assume the roles of mother and father, as they are conditioned from the very birth, perhaps by the television shows which they watch. And these shows contain almost entirely heterosexual relationships, or perhaps also by the majority example of heterosexual parental figures in their community which leads them to believe that heterosexual is the norm.

In media, the homosexual are largely underrepresented, and when they are represented, are often assigned stereotypes that alienate them, or do not have exploration of stable relationships of queer characters. In society, when same-sex relationships are observed, people often assign one partner the aspects of “masculinity” and the other concept of “femininity” which is a result of the normalization of the heterosexual binary gender roles (McVicar, 2013). Heterosexual

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<sup>5</sup>[www.genderspectrum.org](http://www.genderspectrum.org) • 510-567-3977 • [info@genderspectrum.org](mailto:info@genderspectrum.org)

<sup>6</sup><https://opentextbc.ca/introductiontosociology/chapter/chapter12-gender-sex-and-sexuality/>



bias is also present in advertisements (Saraceno, 2014). Politically, the seeds of homophobia resulting from heteronormative mentality gave rise to laws against gay marriages and other forms of political discrimination against queer communities (ibid).

Heteronormative mentality in modern culture stigmatizes queer society, and often infringes upon the rights or offends the queer society. Sometimes individuals are forced to come out of the closet or tell others that they are queer because it is expected that they are heterosexual and they fall within the rigid binary in the first place (Guittar, 2014). Sexuality based crimes, partly stemming from heteronormativity, remains the third most common hate crime type (Green, 2010). Queer individuals have an inferior social standing because of heteronormativity, causing a decrease in economic opportunity. Collectively, these negative effects against queer identities are caused by the pervading heteronormative mentality existing in the society<sup>7</sup>.

Heteronormativity is maintained and perpetuated by social institutions such as marriage as well as by everyday actions taken by individuals. One of the most important aspects which helped to create heteronormativity in the society is the role of medical sciences. In medical parlance, a homosexual is the one who is sick and needs treatment, a person born with sexual deformity needs to correct his anatomy because he/she is thought to be born in a “wrong body” and that body needs to be corrected and so on. Such understandings of sex and sexual preference<sup>8</sup> have restricted a more inclusive and diversified knowledge of sexuality (Hines, 2007:63). The stereotyped notion that a man should have a definite kind of body and desire/behave in masculine manner and a woman should have female anatomy and desire/behave in a feminine way have clouded our consciousness till that level that we tend to ignore all the other identities that lie in between these binaries. Medical science has very much created this mind set.

With the advent of medicine came need of classification of healthy from disease, healthy made sense only when it was put as a binary to disease. In that same way, in the study of sexuality too, a whole together new discipline of study came into being

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<sup>7</sup><https://www.wattpad.com/98513884-gender-studies-negative-effects-of-heteronormative>

<sup>8</sup>Sexual preference is a term which means the affinity of an individual to be attracted towards opposite or same sex individuals. What an individual would prefer sexually need not to be just towards the opposite sex. It may happen with the same sex too. It is based upon ones sexual preference and not upon the established set of norms and laws which just normalize heterosexuality.

which was termed as “abnormal sexuality” (Narrain and Chandran, 2005: 50). In order to study this abnormal sexuality one has to first understand what normal sexuality is. Normal sexuality is the one which could be understood under the structure of heterosexual marriages, and all the other sexualities are considered abnormal. One of the prime arguments why they were considered abnormal sexuality was that they were non-procreative in nature. Thus, the role of desire and pleasure was out of question in this mode of organizing sexuality. As a result what happened is that to understand normal sexuality, the then scholars started to stigmatize the perverse sexuality (ibid).

Thus there were several researches on the question of homosexuality as a disease, some of which concluded that homosexuality was a result of a pathogenic family with a domineering mother and a detached father. As a result, the efforts to normalize such abnormal sexuality also began which included several surgical experiments, use of hormones based upon the understanding that ‘man were inadequately masculine and woman were too masculine’ (ibid). However, the treatment which got culturally hegemonic position was behavioural therapy. This therapy addressed homosexuality as a question of behaviour which could be corrected.

However, such questioning of homosexuality as a sexual perversion was not without criticism. With the beginning of the Gay Liberation Movement, the gay activists started to use various strategies to question the framework of pathology. They started to politically understand the cultural power of psychiatry and how psychiatry’s inclusion of homosexuality as an illness led to the medicalization of social life (ibid: 53). They also questioned the authority of psychiatry to speak on behalf of a silent population. Also, the hegemonic ideology of sexuality as procreation was questioned which delinked procreation with pleasure. Finally in 1973, after years of bitter disputes, the Board of Trustees of the American Psychiatric Association approved the deletion of homosexuality as a mental illness (ibid: 54).

Moreover, there were also the historians who aimed at studying the history of sexuality and have shown how medicine began to play a dominant role in the understanding of sexuality during the 19th century. Central to the medical profession’s interest in matters of sexuality was the attempt to classify all acts of non-procreative sex and the terms used to describe homosexuality were ‘sexual inversion’

and ‘contrary sexual feelings’ (Ekins and Kings, 1996:80; Hines, 2007: 10-11). Some of the most important works that paved the early roads to a proper understanding of sexuality were Hirschfeld’s study *Die Transvestiten* (1910) which was colossal in the categorization of the practice of cross-dressing. Ellis (1928) further distinguished between same sex desire and cross dressing as two dissimilar and diverse things. The works of Hirschfeld’s and Ellis’ had two important consequences. Firstly transsexuality was distinct from homosexuality and secondly, transsexuality became separated from transvestism transsexuality (ibid).

What we can say here is that medical and psychological studies have constructed particular ways of thinking about gender diversity that continue to inform social, cultural and legal understandings of transgender. Benjamin’s *The Transsexual Phenomenon* (1966), Stoller’s *Sex and Gender* (1968) and Green and Money’s *Transsexualism and Sex Reassignment* (1969) were monumental in creating the epistemological power of medical discourses that worked to restructure specific aetiologies of transgenderism (ibid).

## **2.2 Conceptualizing Sexual Minorities**

Though the practices surrounding and upholding transsexuality dates back to the ancient past, yet the attempts to understand transsexuality from a theoretical parlance is a new one. And the area which is now broadly termed as transgender studies is a unique blend of various theories and applies various approaches to make a clear understanding about the subject (Hines, 2007:28). To a very large extent, it depends upon autobiographical accounts to develop its content, even though it also closely associates itself with the political goals and motives fused with transgender community movement. Thus the gap between theory and action can hardly be felt here. Most importantly, third gender studies are interdisciplinary and intertextual i.e. mixing academic scholarship with autobiography (ibid).

In her *The Transgender Studies Reader* (2006) which can be said to be one work of enormous importance in recognizing transgender theory/studies, Stryker traces the origin of transgender studies to two important publications of the 1990s. In her “the Empire Strikes Back: A Post Transsexual Manifesto” (1993) Sandy Stone critically

responded to Raymond's<sup>9</sup> thesis by calling for transsexuals to leave behind the claims of authenticity and to come out as transgender men and women. Similarly, in the political pamphlet entitled, *'Transgender Liberation: A Movement Whose Time Has Come'* (1992), Leslie Feinberg envisaged a united movement of all individuals who fell outside gendered social conventions and embodied norms" (Hines, 2007:28). All these works were able to raise fundamental questions about the formation of an identity and the role played by an individual and the society as a whole in the creation of that identity. The gender identity of an individual which was thought to be based on the binaries of masculine and feminine was put into question by these scholars. Transgressing the gender binary model, these works created a space for all those who were 'outside' the debate and whose identities were not addressed within the predetermined binaries.

The theory which is most closely associated with the concept of 'sex and gender' is undoubtedly feminism. It is feminism which for the first time voiced against the subjugation of women and claimed equal rights for them as equal members of the society along with man. It was feminism which for the first time made the distinction between sex and gender<sup>10</sup>. As Simon de Beauvoir (1949) says "one is not born but rather becomes a woman" which means that sex is more or less determined at the very birth of an individual based on its anatomy but gender as a category is given by the society in the way they determine the roles of man and woman. Sex and gender are thought to be, thus different from each other (Haslanger, 1995: 98). However, problems arise when, in spite of repeated assertion that sex (as a biological factor) is distinct from gender (as a social construct), we could see the increasing attachment of gender with ones assigned sex. As Eleanor MacDonald puts:

*"Gender is viewed as mutable and socially constructed while, in the same breadth, it is contradictorily presented as determined immutably by one's assigned sex at birth and upbringing. No thought is given to the unique perspectives that transgendered people might have to contribute to the understanding of gender experience, gender relations or of women's oppression"* (MacDonald, 1998: 4).

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<sup>9</sup> Janice Raymond's thesis is that transexuality is a patriarchal characteristic and the medical establishment is an agent of patriarchal oppression. Sex is chromosomally dependent and thus secure at the time of birth (Hines, 2007: 17)

<sup>10</sup> sex as a biological category and gender as the sum total of social characteristics imparted to that biological category

According to Maggie Humm and Rebecca Walker, the history of feminism can be divided into three waves which have its own distinctive focus over specific concerns that affect the society in general and woman in particular<sup>11</sup>. It is the second wave feminism which started responding to the growing awareness of transgender practices in the western world. The issues surrounding third gender raises fundamental questions on the epistemology and ontology of sex and gender, it also problematises the relationship between sex and gender by raising ‘complex questions about the construction, deconstruction and ongoing reconstruction of both gender and sexual taxonomies’ (Hines 2007: 17). However, the paradox is that these issues have always been central to feminist thought, yet feminism as a thought has most of the time adopted a hostile attitude towards transgender gender<sup>12</sup> practices at a theoretical, political and even cultural level (Raymond, 1980; 1994; Jeffreys,1997; Greer 1999).

However, with the advent of post modernism and post structuralism in the study of feminism the issues of transgender and other sexual minorities came to be dealt in a more serious and theoretical manner. Moreover, with the coming of transgender theory and queer theory, the radical approach adopted by the feminist theorists towards the transgender individuals came to be analysed under critical grounds. The fact that post structuralism and post modernism could raise questions regarding the epistemological and ontological status of many concepts which so far was thought to be holy and unquestionable for any feminist understanding, exposed the loop holes within the theory itself which needed further analysis and understanding.

### **2.3 Radical Feminism and the Transgender**

Gender has always been central to the study of feminism, and it can be said to be the building block of feminist theory. Gender is always viewed as separated from the biological sex. This helps to expose the influence of external environment on the very constitution of an identity of any individual. This separation is also justified by a gradual but growing determination to move away from biological determinism and philosophical essentialism, parallel to a progressive estrangement from nature

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<sup>11</sup>[www.gender.cawater-info.net/knowledge\\_base/rubricator/feminism\\_e.htm](http://www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.htm)

<sup>12</sup> The term transgender may be used in two different senses. In a specific manner, transgender means the persons who desire to live in a gender opposite to his birth gender, it means a person who have undergone through physical changes in order to fulfill their lives and find comfort in their gender. In a broader sense, transgender would mean something similar to gender variant identity. It means the persons who have transgressed the boundaries of pre determined gender binaries and asserted for their own individual identities against the heteronormative structure of the larger society.

(Beasley 2005:62). This separation is introduced with arguments, for different reasons and purposes. Gender is presented as a product of education in psychosexology and psychoanalysis or as social and cultural construction in feminist sociological and philosophical reflection in order to highlight, in a progressively more evident manner, the irrelevance of nature and the importance of external environment on sexual identification (ibid). The reasons for this trend are attributable on the one hand to the explanation of empirical complexity (in the problematic cases of sexual ambiguity and transsexualism), and on the other to the configuration of different social scenarios for women who claim different roles than those traditionally considered to be discriminatory (ibid).

The coming of the transgender practices raised some fundamental questions about the very epistemological status of the term gender and problematized it by exposing its reliance on gender binary model which is nothing but yet another source of marginalization. Based upon the post modern techniques of deconstruction, several scholars have shown how the category of difference i.e. something different from something, itself becomes a source of marginalization, because it is difference which sow the seeds of self and other and breeds inequality (Palazzani, 2013: 4). And undoubtedly, previously feminism was based upon the gender binary model which was yet another source of guarding the heterosexual mode of organizing sexuality (Monro, 2000: 36).

Many feminist theorists who were critical to second-wave feminism feel the need to protect an essentialist view of gender, particularly what it means to be a woman. This resistance often occurs in the form of aggressively anti-trans rhetoric by theorists such as Janice Raymond and Germaine Greer. Trans-Exclusionary Radical Feminists (TERFs), such as Raymond and Greer have been crucial in their contribution to the feminist movement, but their transphobic discourse has been detrimental to the advancement of intersectional feminism. Germaine Greer is arguably one of the most celebrated feminists of the 'second wave'. She demanded economic equality for women, and encouraged them to acknowledge and reject the patriarchal power structures in society. Her first book, *The Female Eunuch*, was a cornerstone of the feminist movement in the 1960's and 70's. She argued that sexual liberation was the key to female empowerment, and that solidarity between women was crucial for feminist progress (Schweizer, 2017).

The issue with these theorists arose with the coinciding ‘third wave’ and the emergence of post-feminism. The scope of Greer and Raymond’s works had been narrowly focused and didn’t acknowledge the nuances of race, class, or ability<sup>13</sup>. These theorists were not willing to adopt a more intersectional approach. As Lemert (2013) states “if feminism has a purpose, then that purpose is to represent, support and provide shelter and community to those whom the patriarchy oppresses”. Part of an intersectional approach to feminism is a more inclusive definition of womanhood (Schweizer, 2017). TERFs take issue with all transgender people, but most of the literature they have produced has focused heavily on the “appropriation of femininity” by trans women. The third wave of feminism generally agrees that if transgender people desire medical intervention, they should be supported to do so, and view it as affirming rather than degrading (Silvers, 2007).

Most of the works of feminism that were done in the preliminary stage was guarding this gender binary model by ignoring all other sexual minorities whose desires and wants did not tally the vast majority. Thus, one of the renowned scholars named Monro argued that feminism is problematic as a basis for the understanding of transgender, it is because at the heart its point of reference always rests on the binary categories of male and female (ibid). Having said this, most of the first generation works done under the premises of feminism and addressing the question of transgender was basically hostile in nature.<sup>14</sup> The scholars viewed transgender practices to be detrimental to the interest of feminism as it went against the established notions of gender and the predetermined categories of male and female, which was till then thought to be given and unquestionable (Raymond, 1979; Jeffrey, 1997).

This thought became more evident when Janice Raymond came out with her publication “Transsexual Empire: The Making of She-Males” (1979) where she compares transsexual woman with a rapist. According to Janice,

*“All transsexuals rape women’s bodies by reducing the real female form to an artifact, appropriating this body for themselves. However, the transsexually constructed lesbianfeminist violates women’s sexuality and*

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<sup>13</sup>[www.academia.edu/29755063/A\\_Criticism\\_of\\_Trans-Exclusionary\\_Radical\\_Feminism](http://www.academia.edu/29755063/A_Criticism_of_Trans-Exclusionary_Radical_Feminism)

<sup>14</sup>Works like Janice Raymond’s (1979) “Transsexual Empire: The Making of She- Males”, Sheila Jeffrey’s (1997) “Transgender Activism: A Feminist Perspective”, are examples.

*spirit, as well. Rape, although it is usually done by force, can also be accomplished by deception...*” (Raymond, 1979:104)

From the above statement it is clear that feminism positioned transgender in the extreme of gender determinism. It reflected not only the relation of feminism to gender but also gender to sex. *The Stanford Encyclopedia of Philosophy* explaining the ‘Feminist Perspectives on Trans Issues’ (2006) states that ‘Raymond views transsexuality as a patriarchal characteristic and the medical system as an agent of patriarchal oppression. Raymond viewed the medical establishment as instrumental in the entire creation of transsexualism. The title of her book refers to her theory that medical practitioners and society as a whole, whom she describes as the “Transsexual Empire” were trying to “coalesce to institutionalize transsexual treatment and surgery” in order to shape acceptable societal gendered behaviour (Raymond, 1979: 15). In short, she argues that “transgenderism” is a psychological illness that should not be treated with medical intervention. She goes so far as to suggest trans women “rape” women’s bodies by appropriating femininity and conforming to gender stereotypes (Raymond, 1979: 15). She claims that gender dysphoria (which she instead refers to as gender “dissatisfaction”) prevents individuals from seeing gender in a feminist framework (Raymond, 1979: 16). For her, sex and gender was co-dependent. Sex was chromosomally dependent and thus secured at the time of birth itself so any attempt to deviate from that sex that is secured at the time of birth is nothing but artificial which cannot be said genuine. Sex exists as a given prior to the machinations of culture; social sex roles are then assigned on the basis of sex. (Raymond does not usually use the term gender, preferring, instead, the expression sex role). Membership in the category woman is determined by chromosomes and the individual's history of experience being assigned to a sex role (Raymond, 1979: 4, 18, 114).

Her argument is based in her belief that trans women are not (and cannot) be ‘real’ women. While she encourages cisgender<sup>15</sup> women to subvert gender roles, she simultaneously states that any trans woman who presents in a traditionally feminine manner is “putting on a parody” or a “caricature” (Raymond, 1979: 17). She argues that what makes a woman is “female” biology, “female history” (socialisation), menstruation, “capacity to become pregnant”, and a “history of female subordination

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<sup>15</sup> Denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.



in a male-dominant society” (Raymond, 1979: 19). She also takes on a very sex-negative approach, profiling trans women as sex workers:

*“Although prostitution is described as an economic necessity for most transgendered individuals, there is also the admission that it is part of the discovery process that a transgendered woman may go through. Some of it is acting out fantasies, obsessions, or compulsions. It’s a sort of coming-of-age, a part of the transition, an identifying and validation process. So we have here, an idealizing of sexual exploitation and prostitution in the name of transgender transformation, identity, and maturity”* (Raymond, 1979: 25).

A second underlying assumption of Raymond’s position is that oppression experienced by transsexuals (and trans people more generally) is nothing but an aspect of the sexist oppression enforced through sex role (Raymond, 1979:16). In other words, MTFs (Male-to-Female) are really men who are victims of the violence done through the rigidly enforced sex-role system and FTMs (Female-to-Male) are really women who, as such, are the central targets of this system. On the basis of these two theses, Raymond is led to see the medicalization of gender variance and the gender identity clinics as nothing but vehicles to further secure sexist sex roles. Thus, for her, a sexist society is “the first cause” of transsexuality (Raymond, 1979:16).

The role of the medical treatment of transsexuality is to turn men into “women” and women into “men” when they cannot be normed into their naturally assigned sex roles. For Raymond, the phrase transsexual empire applies to the patriarchal medical establishment which perpetuates sex-role oppression through surgical intervention. Henceforth, Raymond’s work can be said to be one of the earliest account of approaching transsexuality in a theoretical manner whereby, the dichotomy of sex and ‘sex role’ are determined by the heterosexual norms of the society and any attempt to deviate from it leads to oppression in the name of surgery and the socio-medical establishment. But the question of gender fluidity and the role of desire and freedom to choose ones gender is largely remained unquestioned here’<sup>16</sup>.

In 1999, Germaine Greer published *The Whole Woman*, as an informal sequel to her 1970 bestseller *The Female Eunuch*. In the 1970’s, her publication was seen as confrontational and revolutionary, but *The Whole Woman* was met with significant criticism due to a chapter entitled ‘Pantomime Dames’, which viciously attacked

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<sup>16</sup> <http://plato.stanford.edu/entries/feminism-trans/>

transgender people, particularly transgender women (Stryker, Currah, & Moore, 2008). In fact, it was received so negatively by the LGBTIQ community that she was “glitter bombed” at the New Zealand International Arts Festival in 2012 (Herald Online, 2012). The chapter has been described by some as an “eleven-page hate crime” for its blatant transphobia and its wider cultural impact (Schweizer, 2017).

The chapter title ‘Pantomime Dames’ alludes to the traditional roles in British pantomime theatre where men portrayed women with exaggerated costume and stereotypical feminine mannerisms (ibid). Similar to Raymond, Greer takes the essentialist view that our biology dictates our gender identity and refers to surgical intervention as “mutilation” (Greer, 1999:65). She again maintains that only those who can menstruate or bear children are “true” women, and that only those who are assigned female at birth are susceptible to patriarchal oppression. She equates “transsexualism” with sex work and compares trans women to rapists (Greer, 1999:74). She argues that trans women are “impersonating” their mothers and compares them to Norman Bates of Alfred Hitchcock’s *Psycho* (Greer, 1999: 74). Like many of her predecessors, she focuses very narrowly on the genitals, medical intervention and sexual activity of transgender people in an attempt to dehumanize them (Schweizer, 2017).

TERF theorists follow an essentialist model of gender, which attributes femininity to female-assigned bodies and masculinity to male-assigned bodies. Judith Butler argues that assigning roles based on biology is one of strongest mechanisms by which patriarchy is reinforced. This view also assumes that Western ideologies of gender are the only framework which exists, when in fact ideas and performances of gender vary drastically based upon “geopolitical boundaries and cultural constraints” (ibid).

At the forefront of transfeminism is Julia Serano; a trans woman, gender theorist and biologist. In 2007, she wrote her book *The Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* as a series of personal essays. She addresses TERFs directly in her introduction (ibid):

*“The few non-trans feminists who have written about us in the past have usually made their theses upon the assumption that we are really ‘men’ (not women), and that our physical transitions to female and our expressions of femininity represent an appropriation of female culture, symbolism, and bodies”*(Serano, 2007: 9).

She furthers this by indicating that trans-exclusion is slowing the progress of feminism:

*“ It is no longer enough for feminism to fight for the rights of those who were born female. That strategy furthered the prospects of many women over the years, but now it bumps up against a glass ceiling that is partly of its own making”*(Serano, 2007: 19).

Greer and Raymond argue that only those who can menstruate or bear children are “real” women, but this narrow mind set also excludes many cisgender women who have reproductive disorders, as well as intersex and post-menopausal women. Serano rebuts their suggestion that trans women are not “real” women, arguing that it is “downright sexist” to reduce any woman to her body parts, especially her genitalia. She disagrees with Raymond’s ‘Transsexual Empire’ concept, stating instead that the trans population has been “systematically pathologized” by medical professionals and ridiculed by mainstream media (Schweizer, 2017).

She rejects the strict binary theories of essentialism and constructionism, and instead proposes that “certain aspects of femininity (as well as masculinity) are natural and can both precede socialization and supersede biological sex” (Serano, 2007:10). She suggests that transphobia comes from personal insecurity about the gendered pressures, expectations, and restraints based on sex assigned at birth (Schweizer, 2017).

While many TERFs insinuate that all trans women are sex workers, Serano argues that these ideas are rooted in the media’s hypersexualized representation trans women, portraying them as “sexual deceivers”. This implies that expressions of femininity only exist to please men, and that women (cis or trans) “have no worth beyond their ability to be sexualized” (ibid).

Sandy Stone’s essay “The Empire Strikes Back: A Posttranssexual Manifesto” (1991) was written as a reply to Raymond’s book. Being a transgender herself, Stone, in her essay reviews four autobiographical accounts of male to female transsexuality. Each reveals narratives of deliverance in which they conquer imperatives of rigid gender and embrace conversion or change. She brazens out the ways in which both the medical complex and feminism had been utilized as a tool for the regulation of gender/sex systems and the organization of trans bodies. She suggest transsexuals to be constituted not as a division or problematic "third gender", rather she sees it as a

genre—a set of embodied texts “whose potential for productive disruption of structured sexualities and spectra of desire has yet to be explored” (Stone, 1991).

Stone exacts her revenge not by waging an anti-feminist counterattack on Raymond, but by undermining the foundationalist assumptions that support Raymond’s narrower concept of womanhood, and by claiming a speaking position for transsexuals that cannot be automatically dismissed as damaged, deluded, second-rate or somehow inherently compromised (Riddles, 2006).

‘Drawing on the autobiographies of some transsexual women, Stone finds herself in agreement with Raymond in worrying about what she sees as the uptake of sexist stereotypes by some MTFs (Stone, 1991: 289). However, she also notes some MTF insistence upon a male/female binary and the absence of any middle or more complex gender ground (ibid: 286). What is lacking here, according to Stone, is the space for discourse of transsexuals as transsexuals. She points to ways in which the medicalization of transsexuality has required both the uptake of sexist behaviour as well as the acquiescence to a strict gender binary. In this way, she argues, transsexuals have been complicit in telling a story within a genre that does not necessarily reflect their own subjective experiences’ (Stone, 1991: 295).

Stone's article played a very important role in laying the foundation of transgender studies, of which the most important characteristic was the coming to academic circles of some trans people against a history of scholarly objectification. *The Empire Strikes Back* galvanized young transgender scholars and focused their attention on the need of self-assertion within a largely reactionary institutional structure. The early nineties also witnessed the emergence of current transgender politics, articulated in the popular works of Leslie Feinberg (1992, 1993, 1996, 1998) and Kate Bornstein (1994). Three major features of what might be called the transgender paradigm paralleled the ideas of Stone: 1) the recognition of gender-based oppression, usually targeting trans people, as distinct from and non-reducible to sexist oppression; 2) the positioning of trans people as problematically situated with respect to the binary categories man and woman; and 3) the endorsement of a politics of visibility (ibid).

More recently, Sheila Jeffrey (1997) has also explored the radical feminist tradition by showing transgender practices as an anti feminist phenomenon constructed by a

patriarchal medical system. She problematised the concept of transgender in her essay and even categorically stated that transsexualism should be seen as a violation of basic human rights. She goes further ahead by stating that transsexualism is also politically dangerous to women's chances of freedom as it maintains the idea of gender dichotomy which forms the very foundation of male supremacy. Describing transgender practices as anti feminist agenda which is created by a patriarchal medical system which she wishes to critique (Hines 2007: 19).

Thus, she clearly mentions:

*“the medical profession need not direct gender dissatisfaction to surgery. Councelling is possible to make clients take a more political approach to their situation and to realise that they can rebel against the constraints of a prescribed gender role and relate their own sex in their native bodies. Unfortunately many doctors are so convinced of the existence of a phenomenon called transsexualism that they do not offer any approach apart from self- mutilation”* (Jeffreys, 1997).

Thus, highlighting Jeffrey's point, Hines put that pathologising of transgender people is complicit with the medical model she claims to condemn. As gender identity clinics were attempting to develop more sensitive approaches to transgendered clients, then, radical feminist theory served to reinforce the positioning of transgender men and women as deviant outsiders. However, there were other works going on which tried to reconfigure the relationship sex and gender in a more progressive manner.

Hence, the initial lens through which feminism viewed the issues of sexual minorities (or transgenders) was that of utter hostility. Raymond's, Greer's and Jeffrey's approaches to transgender are worth considering at length here as they exemplify how a gender binary understanding is unable to incorporate transgender into feminist theory and politics. Although some feminist writers have adopted more progressive approaches to transgender, indicating that a feminist framework may be used to theorize divergent gendered identities and expressions that are unfixed to the 'sexed' body (Hines 2007: 23).

#### **2.4 Feminist Rebuilding of Sexuality and Gender**

Alongside the ongoing radical feminist approach, a handful of scholars like Hollibaugh (1989), Rubin (1989), Vance (1989), Sedgwick (1990), etc. tried to give a more progressive account of the relationship between sex and gender which was identified as different but overlapping categories (Hines, 2007: 20). This body of

thought independently analyses sex from gender in order to understand the underlying difference between them and explore the transgender identities and their erotic desires which could not be easily clubbed under the gender or sexual binaries. It also amounts to the bringing of an overarching shelter which could address the issues of difference that exists within the sexual or gender categories. This group of scholars tries to curve out how within a feminist framework espousal of sexual difference can be done. In this category the works of Gayle Rubin (1989) and Carole Vance (1989) are worth mentioning. Both belonging to the field of anthropology have distinct contribution towards developing an alternative theory of sexuality.

In the edited volume *Pleasure and Danger: Exploring Female Sexuality* (1989), Vance makes a point that feminism needs to take into account and recognize the difference. The difference in ascribing the meanings given to various sex symbol, be it images, practices or performances. When one gives space to the diversity of meanings, one not only acknowledges difference in the dominant ways of seeing these symbols, but also helps in “consideration of a range of transgender sexualities in terms of their commonalities, specificities and differences, both in relation to the dominant culture and to each other.” Though the main idea of the book is to explore the dangers and pleasure involved in all erotic acts, this book paves the way for a recognition of all the subaltern sexual behaviours which till date was hidden and less spoken about.

In *Epistemology of Closet* (1990), Sedgwick argues that standard binary oppositions limit freedom and understanding, especially in the context of sexuality. Sedgwick argues that limiting sexuality to homosexuality or heterosexuality, in a structured binary opposition, is just too simplistic (Sedgwick, 1990). *Epistemology of the Closet* attacks the question of what makes up human sexuality. The basis for the answer to this question comes from Sedgwick's understanding and examination of queer theory, which she describes for her readers (ibid). For Sedgwick, the study of sex is not coextensive with the study of gender, as sex is chromosomal and gender is constructed. She draws distinctions between constructionist feminists (who see sex as biological and essential, and gender and gender inequality as culturally constructed), radical feminists (who see chromosomal sex, reproductive relationships, and sexual

inequality as culturally constructed), and Foucauldians (who see chromosomal sex as biologically essential, sexuality as culturally constructed, and reproduction as both)<sup>17</sup>.

Sedgwick also addresses the ways in which the relationship between sex and gender can be compared to the relationship between race and class. According to Sedgwick, they are related but should be mapped on different axes; Sex and gender, while related, are not coextensive. The variety of sexuality has some links to gender, in that some sexual preference is gender-related, but there are many more dimensions to sexuality which have nothing to do with gender—power, positions, sexual acts. However, gender is definitionally built sexuality in a way in which race and class do not have an analogue<sup>18</sup>.

Gender is definitionally built into homosexuality (meaning attraction to the same gender), but sexuality represents an excess beyond gender and reproduction; therefore, there can be no concept of homosexuality without a prior notion of gender. Also, the very study of gender often reveals a heterosexist bias, because by setting up gender as a binary it assumes a heterosexual norm (Sedgwick, 1990: 34). It is unrealistic to expect a nuanced analysis of same-sex relations through an optic calibrated to the coarser stigmata of gender difference. Sedgwick posits instead constructing a study of homosexuality along the axis of sexuality instead of the axis of gender, so that there would be a much richer analysis and take into account many more dimensions of sexuality other than gender attraction. It might also reveal different forms of oppression and assumptions about identity/power structures feminism takes for granted<sup>19</sup>.

Another scholar, Gayle Rubin published her article, "Thinking Sex" (1989), where she interrogated the value system that social groups — whether left- or right-wing, feminist or patriarchal — attribute to sexuality which defines some behaviours as good/natural and others (such as paedophilia) as bad/unnatural. In this essay she introduced the idea of the "Charmed Circle" of sexuality, that sexuality that was honoured or privileged by society was within of it, while all other sexually was outside of, and in opposition to it. The binaries of this "charmed circle" include couple/alone or in groups, monogamous/promiscuous, same generation/cross

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<sup>17</sup> <http://science.jrank.org/pages/10943/Queer-Theory-Eve-Kosofsky-Sedgwick.html>

<sup>18</sup> <http://bellatrixsy.blogspot.in/2012/06/eve-kosofsky-sedgwick-epistemology-of.html>

<sup>19</sup> <http://bellatrixsy.blogspot.in/2012/06/eve-kosofsky-sedgwick-epistemology-of.html>

generational, and bodies only/with manufactured objects. The “Charmed Circle” speaks to the idea that there is a hierarchical assessment of sex acts. In this essay, Rubin also discusses a number of ideological formations that permeate sexual views. The most important is sex negativity, in which Western cultures deem sex to be a dangerous, destructive force (Rubin, 1989). If marriage, reproduction, or love is not involved, nearly all sexual behaviour is considered bad. Related to sex negativity is the fallacy of the misplaced scale. Rubin explains how sex acts are troubled by an overload of worthiness.

Employing the deconstructive technique of Foucault, Rubin (1989), also tries to show the interconnection between sexuality, historical moments and social systems. Rubin identifies a series of constraints on a radical politics of sexuality which broadly includes sexual essentialism and the “hierarchical valuation of sex acts” (Rubin, 1989: 152-3). By sexual essentialism is meant that the idea of sex is a natural force, it is based on biology and it is rigid and fixed at the time of birth; there is no tolerance for diversity or variation among the group. This sense of essentialist understanding of sexuality poses a serious restriction upon the development of a broader experience of gender. By hierarchy of sex acts is meant the valuation of some sexual practices as superior to the others, like heterosexual marriages are thought to be privileged over others. Because of this kind of a social construction, the persons who are at the top of sexual hierarchy are certified as respectable, legal and socially acceptable. While those ranks low at this scale are seen from the eyes of criminality, disputability and are encountered to various kinds of sanctions (ibid). It is because of such kind of construction in the society that sexual minorities all over the world be it gays, lesbian, transgender, transvestites’, intersexes or any other form of sexual minority are subjected to various discrimination from the society in the name of legality, acceptability and abandonment.

This analysis is important because it draws attention to the ways in which sexual practices has become a matter of social, political and legal franchise. Rubin successfully impinges upon the point when she says,

*“Sex law is the most adamant instrument of sexual stratification and erotic persecution. The state routinely intervenes in sexual behaviour at a level that would not be tolerated in other areas of social life. Most people are unaware of the extent of sex law, the quantity and qualities of illegal sexual behaviour, and the punitive character of legal sanctions. Although*



*federal agencies may be involved in obscenity and prostitution cases, most sex laws are enacted at the state and municipal level, and enforcement is largely in the hands of local police. Thus, there is a tremendous amount of variation in the laws applicable to any given locale. Moreover, enforcement of sex laws varies dramatically with the local political climate. In spite of this legal thicket, one can still make some tentative and qualified generalizations” (Rubin, 1989: 157).*

Where on one hand, Rubin, here, is successfully able to establish sexuality not as a private or medical issue, but as a political and social issue which is very significant, but on the other hand, it also acknowledged the fact that feminism as a theory is not able to challenge the sexual stratification in the society. As already been stated by other scholars, Rubin too identifies the fusion of sex and gender the ultimate problem in developing a political theory of sexuality. She constantly speaks of a theory where sex is understood in terms of sexuality which is not biological but includes desire, fantasy and practice and a theory which could cater to all forms of sexual inequalities; political, social, cultural, legal, economic and ideological.

## **2.5 Post Structural/ Post Modern Feminism**

Poststructural feminism is a branch of feminism that engages with insights from poststructuralist thought. Poststructural feminism emphasizes "the contingent and discursive nature of all identities" (Randall, 2010: 116), and in particular the social construction of gendered subjectivities (Prasad, 2005: 165). Poststructuralist feminism is a body of theory that pays attention to the issues of knowledge, power, difference, and discourse and how these intersect and entwine in the lives of women (Bernard, Davies, Machin and Phillips, 2011). It may be considered a branch of feminism that is interested in the minutiae of everyday experience, especially in how women affect and are affected by their interrelationships with each other and the world around them. An important contribution of this branch was to establish that there is no universal single category of 'woman' or 'man' and to identify the intersectionality of sex, race, ethnicity, class, sexuality, nationality, to name only a few (ibid).

Post-structuralist deconstructionism marks a radical change in the way of understanding the gender category, bringing it toward the dissolution of the same meaning. This line of thought radicalizes the premises of social constructionism. Social constructivism believed that gender was the product of socialisation, namely the construction of meaning in a given society, in a historical era, within a certain

culture (Palazzani, 2013:41). Deconstructionism goes further and interprets this outcome of social construction as a structure produced and organized by power, which should therefore be de-constructed and de-structured (ibid). Gender as a social construction is a ‘compulsory mask’ imposed from above, depending on the creation of social hierarchy: it is a fictional construction, without any basis or foundation. There is nothing either in front or behind: indeed, power hides behind. Nature is only presumed, it also being constructed by power just as society (ibid). According to this perspective, it is therefore necessary to dismantle structures, expose power, cancel each organisation and hierarchy, in order to allow free expression to the multiple, fragmented, contingent individual (ibid).

The postmodern theories of gender refer explicitly to the concept developed by Michel Foucault (Foucault, 1990). Although the author has not directly spoken of gender, his writings have set the stage for postmodern theorising in this category. The author denies the natural sexuality and theorizes sexuality as a result of a complex process of social construction. He speaks of the historicisation but also of the socialisation of sexuality. In his view, sexuality is not a permanent essence of human beings, but it is the product of history, society, context, but also and above all of discourse and power, indeed of ‘biopower’<sup>20</sup> (Palazzani, 2013: 42). As part of the conception of history as a ‘continuum’ of repressive practices implemented through institutions created by the power to control society, Foucault traces the genealogy or archaeology of sexuality. If before modernity sexuality was governed by religious and moral discourse, modernity introduces it into scientific discourse, in the context of natural sciences as a specific and relatively autonomous sphere (Palazzani, 2013: 42).

Sexuality is a discursive creation and an artificial invention of power, as an “instrument of domination” or “control mechanism” (Ahmed, 1996: 71-93). In this sense gender theories, in the context of post-feminism and postmodernism, become the objects of application of this method (ibid). Many theories intend to deconstruct social sex and gender, considering it an important step to liberate the body, identity and subjectivity of the individual from the claim of natural or social essence, presumed as one, simple, homogeneous, static and stable. This perspective breaks

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<sup>20</sup>Biopower as understood by Foucault relates to the practice of modern nation states their regulation of their subjects through “an explosion of numerous and diverse techniques for achieving the subjugations of bodies and the control of population” (Foucault, 1976:140).

down identity into complex, heterogeneous and dynamic identification as a process. With the consequent rejection of all categories: even the same sex and gender categories. Each category has been emptied of content and is used with reluctance, because it always presupposes conceptual systematisation and semanticisation (Palazzani 2013: 43).

Drawing upon Foucault's "genealogical approach", Judith Butler tries to portray how feminist understanding on gender is restricted or limited by the binary categorization of male and female. She argues that the problem lies in the understanding of sex and gender as distinct from one another. Where sex is understood as the biological meaning of a male or female body, while gender is viewed as the social meanings and attributes attached to those bodies (Butler, 1990:56). This understanding has restricted a more pluralistic understanding of gender as something different from sex. Butler seems to deconstruct this notion when she states:

*"The presumption of a binary gender system implicitly retains the belief in a mimetic relation of gender to sex whereby gender mirrors sex or is otherwise restricted by it. When the constructed status of gender is theorized as radically independent of sex, gender itself becomes a free floating artifact, with the consequence that man and masculine might just as easily signify a female body as a male one, and women and feminine a male body as easily as a female one..."* (Butler, 1990: 6)

As it is evident, for Butler, not only gender but also sex which is constructed by the sum total of all social and cultural factors and need not strictly determined by biological factors. She maintains that the reason behind the understanding that sex is correspondingly related to gender has much to do with the prevalence of heterosexuality as the dominant model. Thus, it is the heteronormativity which maintains a gender binary system that seems to be dominant in the society. As Butler puts:

*"Gender can denote a unity of experience, of sex, of gender, and desire, only when sex can be understood in some way to necessitate gender – where gender is a psychic and/ or cultural designation of the self- and desire- where desire is heterosexual and therefore differentiates itself through an oppositional relation to the other gender it desires..."* (Butler, 1990: 22)

Butler uses the notion of performativity in order to illustrate how the hegemonic way of understanding gender are compulsorily acted out in order to naturalize or normalize the dominant model. Butler characterizes gender as the effect of continuous acting,

one that produces the effect of a static or normal gender while it is difficult to understand the contradiction and instability of any single person's gender act.

In *Gender Trouble* Judith Butler undermines the distinction between sex as a natural given category and gender as an acquired cultural- social category. Gender is a complexity whose totality is permanently deferred, never fully what it is at any given point of time (Audry, 2011). Judith Butler develops her famous performative theory of gender (and the analysis of drag queens in this respect) which tries to account the manner in which a subject identity is formed while establishing Butler's claim that gender identity is not a manifestation of intrinsic essence but rather the product of actions and behaviours, that is, performance (ibid). In other words, Judith Butler argues that everyday actions, speech utterances, gestures and representations, dress codes and behaviours as well as certain prohibitions and taboos all work to produce what is perceived as an essential masculine or feminine identity (Butterworth, 2008). Gender identity is just performance. She described all essentialist concepts of sex and gender, a form of the heterosexist oppression because heterosexuality is a norm in society and people are judged on the basis on their sexual identity (ibid). Butler aims at deconstructing this notion of integrated, stable identity as the extension of an inner essence, and the illusion of the sexual body, which are in Butler's view repressive and dangerous, but also undermineable<sup>21</sup>.

Additionally, there are different ways in which the category of sex is understood, depending on the power structure(s) in which it is articulated<sup>22</sup>. Using Foucault, Butler argues that the "being of gender" is an effect; certain cultural configurations of gender take the place of the "real" and augment their hegemony through self-naturalization<sup>23</sup>. Butler argues that it is not enough to enquire into how a woman might become more fully represented in language and politics, but that feminist critique ought also to understand how the category of "women" (the subject of feminism) is provided and restrained by the very power structures through which it is sought<sup>24</sup>. According to Butler, an anti-essentialist position which deconstructs all fixed identities questions the boundaries of the subject as woman and lays it open<sup>25</sup>.

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<sup>21</sup> [www.academia.edu/6927006/JUDITH\\_BUTLER](http://www.academia.edu/6927006/JUDITH_BUTLER)

<sup>22</sup> [http://metapsychology.mentalhelp.net/poc/view\\_doc.php?type=book&id=3882](http://metapsychology.mentalhelp.net/poc/view_doc.php?type=book&id=3882)

<sup>23</sup> [http://metapsychology.mentalhelp.net/poc/view\\_doc.php?type=book&id=3882](http://metapsychology.mentalhelp.net/poc/view_doc.php?type=book&id=3882)

<sup>24</sup> [www.academia.edu/13205615/The\\_Neoliberal\\_Subject\\_of\\_Feminism](http://www.academia.edu/13205615/The_Neoliberal_Subject_of_Feminism)

<sup>25</sup> [theory.theasintexas.org/wp-content/.../2\\_Butler\\_Subjects-of-Sex-Gender-Desire.pdf](http://theory.theasintexas.org/wp-content/.../2_Butler_Subjects-of-Sex-Gender-Desire.pdf)

Butler feels that the "presumed universality or unity of the subject of feminism is effectively undermined by the constructions of the representational discourse in which it functions" (Singh and Singamshetty, 2007). She reveals that by conforming to a requirement of representational politics, feminism articulates a stable subject and thus "opens itself to charges of gross misrepresentation" (ibid).

On Butler's hypothesis, the socially constructed aspect of gender performativity is perhaps most obvious in drag performance, which offers a basic understanding of gender binaries in its emphasis on gender performance. Butler understands drag cannot be regarded as an example of subjective or singular identity, where "there is a 'one' who is prior to gender, and one who goes to the wardrobe of gender decides with deliberation which gender it will be today" (Butler, 1990). Subsequently, drag should not be considered the honest expression of its performer's intent. Rather, Butler suggests that what is performed "can only be understood through reference to what is barred from the signifier within the domain of corporeal legibility".

However, Butler's work is not free from the fetters of criticism. Viviane K. Namaste's (2000) focuses on Butler's account of queer drag as subversive. In Namaste's view, Butler fails to heed to the larger social context in which gay male drag is situated and through which gender is regulated. Namaste points to the social facts that gay male drag performance is often restricted to entertainment on the stage where it is viewed as "mere performance." By contrast, gay male sexual identity is not restricted to the stage and is not viewed as "mere performance" (Namaste 2000:10–13). Given that Butler allows for an ambivalence in subversion, however, it isn't clear that her view cannot accommodate these social facts in the way that she theorizes drag performance in Paris is Burning (1990). Yet Namaste aims for a deeper theoretical critique, charging Butler with departing from a post-structuralist framework which situates such phenomena precisely within a broader social analysis she sees lacking in Butler's account (Namaste 2000:16–23).

By using drag as a way to represent and theorize all gender relations, argues Namaste, Butler fails to examine the multiple concrete ways in which gender is regulated in everyday life (Namaste 2000: 20–1). It isn't clear that this by itself undermines Butler's claim that some gender behaviour can be genuinely subversive<sup>26</sup>. However, it

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<sup>26</sup> Butler does not point only to drag, but also butch/femme presentations of gender

may nonetheless raise worries about Butler's attempt to offer a uniform theory of gender as imitation. Given that degree of abstraction from concrete social circumstance, it may be that Butler omits crucial elements of gender that are specific to various concrete social practices.

In another work, named *Undoing Gender* (2004), Judith Butler has also tried to portray how the hegemonic structure of power directly or indirectly determines the kinds of lives which are liveable and which are not. Who can be said to be a human and who is not. In this work, Butler have shown that belonging to certain gender (assigned by the society) does not mean that that person would desire the same way, desires are not constitutive of gender, they are more or less fluid in nature which is a part of every individuals own specific regime.

Butler highlights the fact that the parameters that have been used to approach, recognize, and categorize humans have always been in flux, and even more so, these parameters are not natural or essential, but rather, socially constructed<sup>27</sup>. The greatest issue with the criteria used to define the human is that they are many times restrictive and paradoxical; the criteria that is used to grant the status of a human to one individual may deprive another individual from achieving this status<sup>28</sup>:

*On the level of discourse, certain lives are not considered lives at all, they cannot be humanized; they fit no dominant frame for the human, and their dehumanization occurs first, at this level. This level then gives rise to a physical violence that in some sense delivers the message of dehumanization which is already at work in the culture. (Butler, 2004: 25)*

This leads Butler to allude to her concept of the “unreal” life, which denotes individuals that have been denied access to a legitimate human existence through the power of discourse. For instance, notions such as skin colour, ethnicity, sexual orientation, birth, and social class have been some of the concepts used to classify some as human while at the same time preventing others from being approached as such (Butler, 2004). If one is unable to be framed within the discursive and normative markers of identity that are used to approach and categorize humans, one is not only queered and left out, but ultimately, one runs the risk of facing violence or of living an unbearable life because one does not count with the constituents of normative

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<sup>27</sup><https://angelmatos.net/2013/11/26/judith-butlers-undoing-gender/>

<sup>28</sup> <https://angelmatos.net/2013/11/26/judith-butlers-undoing-gender/>

privilege. Because of this, Butler calls for a more open and permeable definition of humanity that allows room for change, in order to allow liveability and freedom to thrive (ibid).

Butler in the book *Undoing Gender* (2004) holds that the life of a gender should be understood in terms of the life of desires. Now desires in order to be socially liveable has to be recognized by the society. It is at this place when recognition is invariably tied with power. It is the power which decides which desires are liveable and which are not. Explaining this view Palazzani holds

*“In her view, the only possible condition for a ‘liveable’ and publically ‘visible’ life for the subject, allowing to express the unexpressed and manifest desires and contingent impulses, is to annul what exists in nature before us and which has been constructed socially outside of us. ‘Doing’ and ‘undoing’ points toward a circular practice that is by no means resolved an “incessant activity in progress”, a “productive disintegration” conscious and unconscious; a tool to ‘de-naturalise’ and ‘desocialise’ binarism and heteronormativity. It is the only way to unlearn our natural and social conditions and recognise time and space, to ensure access to the human sphere, free freedom, improvisation of desire expressed in fantasy and imagination, that is always variable, incalculable, unpredictable, by the very fact that it is not rational” (Palazzani, 2013:51).*

Thus, for Butler the task of all the sexual liberation movements should be to distinguish among the norms and conventions that permit people to breadth, desire, love and live from those that restrict the liveable conditions of life itself. Sally Hines too in her work *Transforming Gender* (2007), holds that clothes, toys and activities constitutes the cultural indicators of ones ascribed gender. Dressing in female clothes or playing with dolls as a boy can be seen as a gender resistance through which assumptions around the intrinsic relationship between biological sex and gendered appearance can be challenged. However, in doing so family commitments, career considerations, etc. becomes the major hurdles because, gender resistance is always socially unacceptable. Butler and her books were widely acclaimed as a groundbreaking and an eye opener due to its revolutionary ideas regarding gender identity and the relations between gender and sex and the introduction of the notion of gender as performance or gender performativity.

## 2.6 Queer Theory on Gender

Queer theory is a brand-new bough of study or theoretical speculation; it has only been named as an area since about 1991. It grew out of gay/lesbian studies, a discipline which itself is very new, existing in any kind of organized form only since about the mid-1980s (Klages, 2012). Gay/lesbian studies, in turn, grew out of feminist studies and feminist theory. Gay/lesbian studies, as a political form of academics, also challenges the notion of normative sexualities. As Rubin's article (1989) suggests, once you set up a category labelled "normal," you automatically set up its opposite, a category labelled "deviant," and the specific acts or identities which fill those categories then get linked to other forms of social practices and methods of social control (ibid). Gay/lesbian studies, like feminist studies, works to understand how these categories of normal and deviant are constructed, how they operate, how they are enforced, in order to intervene into changing or ending them. This brings the discussion to queer theory (ibid).

The scholar who is usually identified as first using the phrase "queer theory" in print is Teresa de Lauretis, in her 1991 essay "Queer Theory: Lesbian and Gay Sexualities," published in the important journal *Differences*. However, the texts that are considered most responsible for influencing and developing the principles of queer studies are Michel Foucault's *The History of Sexuality* (1978) and Eve Kosofsky Sedgwick's *Between Men: English Literature and Male Homosocial Desire* (1985).

In his *History of Sexuality*, Foucault explores social constructionist models of sexuality and sexual codification through religion, politics, and economics. Foucault argues against thinking of any form of sexuality as something natural or universal (Foucault, 1978). In *Between Men*, Sedgwick develops the idea of "homosociality." Sedgwick argues that nineteenth-century British culture was built primarily on asexual bonds between men (such as friendship, apprenticeship, camaraderie in the workforce, and so on), which necessitated, for social and economic reasons, strong prohibitions against homosexual bonds (Stephen and Clark, 2002).

Queer theory takes the poststructuralist and postmodern deconstructions of identity categories into consideration and by doing so regards sexual identities as fluid and not fixed. This shows a fundamental deviation from all the essentialist tendencies. Queer theorists have always been critical of the traditional lesbian and gay theory and



accused them for their exclusionary treatment towards those whose identities fell outside the naturalized and normalized standards of the society. In contrast, queer theory aimed at embracing the differences and argued against the representations of identities as authentic and unchanging (Hines, 2007:25). In viewing all gendered or sexual identities as socially constructed, queer theory aimed dissolving the naturalization and pathologisation of minority identities (ibid).

As put by Brenda Cossman “queer theory can be seen as an interrogation and denaturalisation of the sex, gender, desire matrix” (Cossman, 2012: 19). She elaborates the roots of the theory in the links between sex, gender and desire. The homo/ hetero distinction normalised heterosexuality and reinforced very static and essentialist conceptions of sex, sexuality and desire. It was similarly a critique of identity – specifically gay and lesbian identity claims – arguing against the essentialisation of gay identity against a heterosexual norm” (Cossman, 2012: 19-20).

Queer theory also criticized the naturalized notions of normal and, by that extension, of normative sexuality. It also seemed to appear as a lens to focus on sex and sexuality independently of gender (ibid: 20).

*“The emerging body of queer theory was demarcating an area of studying sexuality without gender and without feminism, producing a sophisticated body of work on sex and sexuality that troubled heteronormativity independent of feminism’s focus on male/female relationships” (ibid: 21).*

What makes queer studies "queer", is not that it concerns homosexuality or that its practitioners are lesbians or gay men, but that it questions assumptions that are steeped, often subtly, in heterosexist biases (Meyers, 1997). Whereas lesbian and gay studies attempts to use existing disciplinary lenses (for example, history, political science, literature) to look at homosexuals and sexual orientation in a more positive light than they had been previously, queer theory attempts to "queer" these disciplines, that is, to change them by weeding out the deep heterosexist biases within them (Fuss, 1991). Queer studies emerged from gay and lesbian studies' attention to the social construction of categories of normative and deviant sexualities. But while gay and lesbian studies focuses largely on questions of homosexuality, queer studies expands its realm of investigation (ibid).

Queer studies considers, and conducts a political critique of, anything that falls into normative and deviant categories, particularly sexual activities and identities. The

word "queer," as it appears in the dictionary, has a primary meaning of "odd," "unconventional," or "out of the ordinary." "To queer," then, is to render "normal" sexuality as strange and unsettled, to challenge heterosexuality as a naturalized social-sexual norm, and to promote the notion of "non-straightness"(Turner, 2000). Thus, queer studies expands the scope of its analysis to all kinds of behaviours, including those that are gender-bending, as well as those that involve "queer" forms of sexuality (ibid). Queer studies insists that all sexual behaviours, all concepts linking sexual behaviours to sexual identities, and all categories of normative and deviant sexualities are social constructs, sets of signifiers that create certain types of social meaning (ibid).

For queer theorists, sexuality is a complex array of social codes and forces, forms of individual activity and institutional or political power, which interact to shape the ideas of what is normative and what is deviant at any particular moment, and then operate under the category of what is "natural" or "essential." (Rudy, 2000). Essentialist notions of homosexuality and heterosexuality are challenged by queer theorists, who, instead, assert an understanding of sexuality that emphasizes shifting boundaries, ambivalences, and constructions that change depending on historical and cultural context (ibid).

Two particularly influential works in queer studies are Judith Butler's *Gender Trouble: Feminism and the Subversion of Identity* (1990) and Alexander Doty's *Making Things Perfectly Queer: Interpreting Mass Culture* (1993).

Queer theory also seizes on works that suggest that gender and biological sex, like sexual preference, are socially constructed<sup>29</sup>. They note that a homo/hetero system wrongly presumes that everyone has either an obvious penis or vagina, that every person has an uncomplicated, positive relationship to that biological entity, and that owning that piece of equipment necessarily correlates to certain ontological characteristics<sup>30</sup>. The categories of homosexual and heterosexual, they suggest, are themselves built on the assumption that everyone is either male or female and that that gender identification is itself self-evident to all observers (Rudy, 2000). These queer theorists note that the concept of gender is also socially constructed and very often

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<sup>29</sup> <https://opentextbc.ca/introductiontosociology/chapter/chapter12-gender-sex-and-sexuality/>

<sup>30</sup> <https://opentextbc.ca/introductiontosociology/chapter/chapter12-gender-sex-and-sexuality/a/introductiontosociology/chapter/chapter12-gender-sex-and-sexuality/>

exists on an unstable background of tacit assumptions and fantasies about both "men" and "women." (ibid)

As Palazzani (2013) in the famous work *Gender in Philosophy and Law* exploring the relation between gender and queer writes that there are two elements that presage in an inventive manner the term 'queerness' or 'queering'. And those two elements are polymorphism and pansexualism.

*"Polymorphism is expressed in the radical problematisation and denial of sexual binarism. Queer indicates a way of thinking and living sexuality in contrast to the rigid binary male or female classification. Queer explicitly expands the gender category to include in addition to the reference to sex also reference to sexuality, as sexual orientation, that is the set of behaviours, attitudes, acts and desires which are aimed at the bond with the other, the attraction towards the other..."* (ibid: 45).

Discussing Pansexualism, Palazzani also says that queer theory

*"goes beyond sexuality studies with the theory of pansexualism, which problematises and denies heterosexuality as privilege in society. There is strong criticism of heterosexism, heteronormativity, and heteropatriarchy. Queer considers each sexual orientation to be equivalent, whether it is expressed towards the opposite sex or the same sex or to both sexes. It is the exaltation of omnisexuality, polysexuality and mulitsexuality, where every sexual preference is justified by the mere fact that it is expressed, at the moment and in the manner that it is expressed"* (ibid).

Queer is therefore an amorphous and speculatively open term: a flexible, fluid, variable, permeable category against closed, rigid, fixed, impermeable dichotomies (ibid). A widely used acronym is LGBTI indicating lesbian, gay, bisexual, transsexual/ transgender/transvestites and intersex. Their common feature is the construction of their gender identities in opposition to biological determinism and essentialism (ibid). Their intention is to problematise on the theoretical level and to withstand in terms of practice rigid sexual dimorphism and heterocentrism. It outlines within communities a kind of solidarity among individuals and groups, each different from the other, but joined by the will to provoke the traditional paradigm and transgress and destabilize the usual social rules, with the intention of dismantling any difference, considered inequality, appealing to equality in the sense of equivalence (ibid: 11-13).

The queer theory rejects any hierarchy and distinction between central/ peripheral and primary/marginal both in relation to sexual identity as well as sexual orientation. The

difference is the cause of hierarchy which reinforces gaps between normal considered superior and abnormal considered inferior (ibid). “One can be either a woman in a female body and a man in a male body or a woman in a male body and a man in a female body, both by transforming the body (transsexuals) and also by accepting the ambiguity, hybridity, and male/female coexistence (intersex, transgender). One can be heterosexual, homosexual, or bisexual” (ibid).

## **2.7 Conclusion**

As we see above, the concept of gender underwent through a various changes with fresh additions and subtractions with the change of time. It was feminism which undoubtedly paved the very foundation of gender studies. It helped in exposing how sexuality becomes a major category in the marginalization of certain groups from the society. However as noticed above in the discussion, feminism was mainly only concerned with men and women. It was mainly rooted in the binary categories of man and woman. Hence, it was not sufficient to address the issues of many sexual identities which were ignored at large expanse. These other sexual identities did not fall into the two basic rigid binary difference. But, with the intervention of post modernism and post structuralism in feminism, many fundamental changes were incorporated within the study. This not only broaden the base of feminism but also made it more inclusionary in nature. By the bringing in of post modern technique of deconstruction, gender as a fixed and rigid category was bought into question and the concepts of gender fluidity, gender performativity, gender spectrum was introduced which took the study to a new level.

Further with the coming of queer theory, not only altogether different perspective on gender was understood but even sexuality. Queer theory further broadened the base of understanding gender by including sexuality and sexual orientation within the subject of investigation and analysis. This theory broke all the stereotypes of rigid identities and the two binary division. It introduced plurality not only in terms of gender but also sexuality. Altogether, the theme of sexuality and gender underwent vibrant changes with the changes in time and experience of individuals. Thus, like Sally Hines (2007) suggests, there is also a need to blend the different social theories with that of cultural ones in order to understand the issues related to the identity of the sexual minorities.

## CHAPTER III

### Political System and LGBTQ Rights in Nepal

#### 3.1 Introduction

The discourses surrounding sexuality have undergone through many significant changes since the last two decades. As discussed in the first chapter the term gender which originally denoted socially constructed characteristics of masculine and feminine, as distinct from biological sex, is further deconstructed by post modern feminists and queer theorists to expose the rigidity and exclusionary nature of the same. With the emergence of new social movements organized around the idea of identity, the sexual minorities have become more and more vocal in terms of asserting their rights and coming out to public sphere openly to organize various parades. This chapter, by moving away from the constructed notions of gender binaries would attempt to understand the Queer Movement in Nepal as an emerging identity political movement. This chapter also historicises the presence of sexual minorities in Nepal and will reflect on various discourses around sexuality in Nepal. It also highlights the very historical development of LGBTQ rights and the Queer Movement in Nepal along with the legal and constitutional context of transgender and same-sex sexualities in Nepal.

The following section provides an overview of LGBT human rights in Nepal, starting with a description of the political context for LGBT advocacy over the last three decades. Despite the recognition of LGBT identities in ancient Hindu epics, there is very little research and information on the lives of LGBT individuals in modern times. Research and information only started to become available from the late 1990s (UNDP, USAID, 2014: 24). A 2001 report by FHI (Family Health International) and the Blue Diamond Society (BDS) interviewed approximately 1000 men who have sex with men (MSM) in Kathmandu. The study found fluidity in sexual identities and practices (with many MSM married to women) and little knowledge about men having sex with men, HIV risk and safer sex practices (ibid).

Among all LGBT people, an indigenous female transgender identity known as metis<sup>1</sup> is usually most visible and dominant in the public awareness and discourse. Other LGBT issues and identities are frequently conflated with or confused for being one and the same as metis issues and identities. Due to this connotation, the public is largely unaware about the vast diversity of sexual and gender identities within the LGBT community (UNDP, USAID, 2014: 24).

This chapter shall concentrate on the political developments since the 1990s in Nepal and how they correlated with the growing visibility and strength of the LGBT movement. This chapter will also focus on how these developments created the environment for today's social, political and cultural context for LGBT advocacy.

### **3.2 The Making of LGBTQ Movement**

The 1990 reinstallation of democracy in Nepal, ending nearly 30 years of “Panchayat rule,” an autocratic party-less monarchical governance system, opened increased space for the emergence of civil society organizations, which mostly took shape as incorporated non-governmental organizations (NGOs). With the coming of multiparty democracy, space opened up for large scale civil society organising. This included the emergence of non-governmental organizations (NGOs) including LGBT activists and organizations. NGO registration mushroomed: by 2000 there were more than 30,000 registered in Nepal<sup>2</sup>. As NGOs emerged, international donors shifted substantial focus away from the state's work on poverty alleviation and economic growth to NGOs. Civil society activism emerged as a major force in national and local life and politics. The increase in engagement with NGOs was attributed to the frustration of many donors with the government bureaucracy which they viewed as ineffective compared to NGOs (UNDP, 1998). Donor funds included significant resources targeted at halting and reversing the HIV epidemics. The UN and international donors began to consider NGOs as primary implementing partners on poverty alleviation and economic growth and promoting the inclusion of vulnerable groups including sexual minorities and people living with HIV. Some have argued that this shift was partially

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<sup>1</sup> A self-identified label used by feminized males (cross dressers) who have sex with men, and used their feminine behaviours in public spaces. The South Asian equivalent for metis is kothis.

<sup>2</sup> Government of Nepal, Social Welfare Council, “NGOs affiliated with Social Welfare Council,” [http://www.swc.org.np/SWC\\_NGOs\\_Total.pdf](http://www.swc.org.np/SWC_NGOs_Total.pdf)

due to donors believing the state was ineffectual and corrupt, and NGOs more functional and accountable (Miller, Shrestha, and Thapa, 2013: 39).

A remarkable series of events after 1990 saw the increasing acceptance of homosexuality by legal system and politics. There started emerging fundamental changes to the legal and social framework, even though these advances would generally not be translated into the daily lives of LGBT people.

In 1994, bitter rivalries aggravated the political scene and eroded the efficacy of the state, and by 1996 a People's War, metastasized around centuries of social exclusion, had been launched by a Maoist movement<sup>3</sup>. It developed into a full-scale armed conflict by 2001. NGOs previously focused on development and service delivery increasingly paid attention to human rights issues by appealing to international human rights instruments, often for the safety of their development work. This was paired with heightened sensitivity to social exclusion, which was exacerbated by the extreme violence, poverty, and internal migration spurred by the conflict (Tanaka, 2010). The Maoists also deployed inconsistent but appealing human rights rhetoric, construing rights standards alternatively as universal and beneficial when—and typically only when—they were in service of the revolution (Malone and Pradhan, 2012).

Organizations that began by focusing on service delivery transitioned into programs focused on “conscience raising” and other more political work. Little is known about the conditions of sexual and gender minorities in Nepal at this time. Fleeting attempts to hold group meetings during the 1990s are often mentioned, however, most believe these ended when participants either moved abroad or entered into arranged different-sex marriages. Early research indicates fluidity in sexual identities and practices and little knowledge among men having sex with men about HIV risk or safer sex practices (Knight, 2015: 9). Some women joined early gatherings, but most participants were male-assigned at birth people—metis<sup>4</sup>, transgender women, or gay men.

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<sup>3</sup> For more information on Nepal's Maoist People's War, see Aditya Adhikari. *The Bullet and The Ballot Box*. 2014. London: Verso Publishers; and Prashant Jha. *Battles of the New Republic*. 2014. London: Hurst Publishers.

<sup>4</sup> Meti is a Nepali identity term for people assigned male at birth who have a feminine gender identity and expression. For more information on Nepali gender and sexual identity terms, see: The Williams Institute. “Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach,” 2014, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf>

Four years into the insurgency, in the winter of 2000 in a park in central Kathmandu known as a place where prostitutes gathered (Liechty, 2005), conversations among gay, lesbian, and transgender people prompted one of the participants, Sunil Babu Pant, to send emails to some American AIDS activists he knew from the organization ACT UP. Pant, a computer engineer recently returned home after 5 years abroad studying and working, had found that a combination of blackmail at the hands of police and unsafe sex practices were putting many sexual and gender minorities at risk of violence, sexually transmitted infections, and extortion (Knight, 2015: 10).

After several months of these interactions in the park, Pant submitted NGO registration forms to the Social Welfare Council (SWC), the government body that oversees all NGO activities in Nepal. “The clerk at the office looked at the papers and said he could only register the organization if its goal was to convert people back to heterosexuality,” said Pant (Knight, 2015). With this, the NGO, called Blue Diamond Society (BDS), was registered. The NGO got registered as a sexual health and human organisation with no explicit mention of homosexuality.

### **3.3LGBTQ Advocacy in Nepal: After 2000 and the End of the Maoist Civil War**

Nepal’s LGBT movement, led by BDS expanded rapidly because their key challenges were framed to international donors by prioritizing rights based interventions targeting the HIV epidemic. By the late 2000s, their work expanded to include broader human rights programming primarily funded by bilateral and multilateral donors and foundations. In doing so, they rightly drew a connection between HIV and the legal and social frameworks and environments that can either impede the response to the epidemic or improve it, depending on whether they are punitive or supportive (UNDP, UNAID, 2014: 25).

The 2000s provided many opportunities for the LGBT movement. Citizens started pouring out in cities who were supportive of a return to democracy in 2006 demanding an end to monarchy and civil war. This movement was spontaneous and was described as a People’s Movement although its outlines had been planned by the Maoists and democratic parties. LGBT rights activists took advantage of this opportunity to assert their rights by joining the popular uprising. With the signing of Comprehensive Peace Accord between the government and the Maoists in November



2006, the decade long armed conflict came to a formal close which led to Nepal's first Constituent Assembly elections in 2008 (UNDP, UNAIDS, 2014: 26). Civil society including LGBT groups started to vastly expand programming and access external funding as the end of civil war provided space for civil societies. It allowed for vulnerable groups, including sexual and gender minorities, to organise and advocate for greater inclusion and a stake in the political process. They sought to make the state recognise their identities and be cognizant of their rights (ibid).

Several political parties canvassed different groups for support. BDS was able to convince political parties to include LGBT issues in party manifestos of the three biggest parties – the Nepali Congress (NC), the Communist Party of Nepal – United Marxist Leninist (UML), and the Communist Party of Nepal – Maoists (Maoists) (Becker, 2013). On April 2008, the Constituent Assembly (CA) election results were announced by Chief Election Commissioner Bhojraj Pokharel. The Founder and Executive director of Blue Diamond Society, Sunil Babu Pant, was nominated as a Member of Parliament/CA by the Communist Party of Nepal (United) under the proportional representation quota (Carter, 2008). Pant served as a MP until 2012. In becoming an MP, he made history by becoming Asia's first openly gay parliamentarian (UNDP, USAID, 2014: 46).

The remarkable advocacy by the LGBT community in Nepal resulted in notable gains in legal and constitutional recognition. Visibility of LGBT people in public spaces also increased. It also attracted wide civil society support and a commensurate larger presence in the public domain and discourse.

### **3.3.1 From Grassroots to the High Court: Legal Success**

Nepal's LGBTI rights movement formalized at a time of considerable political foment backgrounded by a history of state-influenced (if not explicitly imposed) oppression and a unique and complex legal system. Never colonised, Nepal's domestic laws include a skein of parallel structures influenced by Hinduism, British colonial legal legacies in neighbouring India, tinges of other European histories, and international law. BDS's engagement with the law involved not only navigating a complex environment, but also took place before much international legal attention was paid to LGBTI people, and as the international presence in Nepal was growing substantially.

In 2004, as the conflict continued to affect daily life in Kathmandu, LGBTI people in the city began feeling the burdens of increased rates of violence and insecurity. The security forces in place to control the city were hardly a respite (Pant, 2011). A July demonstration protesting sexual abuse and violence against sexual minorities featuring fifty BDS members was violently disbanded by police<sup>5</sup>.

On June 18 of that year, a law student named Achyut Prasad Kharel filed a case with the Supreme Court demanding that the government disband Blue Diamond Society because the organization's activities fell under the bestiality/unnatural sexual intercourse clause in Nepal's Muluki Ain (country code).

He went on to argue that BDS's activities "campaigning, sloganeering and rallying, organized by the NGO named the Blue Diamond Society ... to promote the 'right to homosexuality'" are illegal and the state has been passive in its response<sup>6</sup>.

The petition was quickly dismissed as *darpath*, or endorsed rejection, by the Supreme Court's registrar, who wrote:

*From a study of relevant legislation and documents, in relation to the registration of this petition, it did not seem that the sexual activities conducted by adult homosexual persons, in private or personal locations, could become a subject for criminal law. Against Nepal's current legal scenario, the issue raised by the petition is not found to be a matter of public concern (Knight, 2015: 18).*

But the petitioner filed the case again, calling the rejection illegal. The second petition was reviewed by a single-judge bench and the initial *darpath* deemed invalid.

The petitioner elaborated by contrasting his "clear legal basis" (including the negative space in international law regarding sexual orientation and gender identity) with BDS's activities: "Blue Diamond Society has been established with the main objectives to campaign for such an illegal activity, to provide recognition to the right to homosexuality and to attract people towards homosexual intercourse." In specific, he rejected the idea that homosexuality could be protected under human rights measures because, he claimed, it was not included in any of the international treaties

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<sup>5</sup> Human Rights Watch, "Nepal: Sexual Rights Group At Risk of Closure," July 22, 2004 <http://www.hrw.org/news/2004/07/22/nepal-sexualrights-group-risk-closure>

<sup>6</sup> Sixty-six chapters of the original Muluki Ain (almost 250 pages of text, or one-third of the document) are dedicated to regulations of sexual relations.

Nepal had ratified to date, and because “same sex (homosexual) relationships are a character demerit in a human.” (Knight, 2015)

BDS reached out to partners, and the petition soon drew international attention. In a letter to the Minister of Home Affairs dated August 5, ARC International, an organization dedicated to LGBT issues at the United Nations, drew attention to the July demonstration in which BDS members faced police violence as a violation against human rights defenders:

Article 5 of the U.N. General Assembly’s “Declaration on Human Rights Defenders” affirms that “everyone has the right, individually and in association with others, to meet or assemble peacefully,” and “to form, join, and participate in non-governmental organisations, associations or groups.” Article 7 affirms the right “to develop and to discuss new human rights ideas and principles and to advocate for their acceptance.” (Knight, 2015: 46)

The letter then pointed to a mention of sexual orientation at the UN:

Indeed, the Special Representative of the U.N. Secretary General on Human Rights Defenders has called attention to the “special importance” of the work of “human rights groups and those who are active on issues of sexuality, especially sexual orientation. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by state forces but by other social actors.” (ibid)

ARC encouraged the government of Nepal to “support the elimination of grounds for ambiguity in Nepalese law through the repeal of the criminalization of ‘unnatural sex’ in paragraphs 1 and 4 of Part 14, Chapter 16 of Nepal’s Civil Code of 1963 (Muluki Ain).” This call was echoed and explained in a letter to the Home Minister by Human Rights Watch. LGBT program director Scott Long explained: “No express prohibition of adult, consensual homosexual conduct exists in Nepalese law. Paragraphs 1 and 4 of Part 4, Chapter 16 of Nepal’s Muluki Ain (National Civil Code) penalize ‘unnatural sex’ with up to one year’s imprisonment. ‘Unnatural sex’ is undefined in the Code” (Knight, 2015: 49).

When Kharel re-filed, the Supreme Court issued a “show cause” order requiring the government entities named in the petition to respond to the case; all four replied rejecting the arguments of the petition.

That same week thirty-nine BDS members were arrested for protesting the alleged brutal police murder of a meti and imprisoned for thirteen days without charges. Jo Becker, a Professor of human rights advocacy at Columbia University, identified this as a major turning point for the movement due to the amount of local and international attention BDS was able to draw to the violence and the detention (Becker, 2013). While the government bodies named in the petition prepared their responses to the case, BDS garnered support demanding the release of its members and delivered food to them in a police jail. BDS’s work to publicize the arrests catalysed unprecedented attention from international NGOs and media, sparking coverage or statements from Amnesty International, Human Rights Watch, the BBC, UNAIDS (UNDP, UNAIDS, 2014), the Coalition of Asia-Pacific Regional Networks on HIV/AIDS, the Naz Foundation International, and Sidaction and Act Up-Paris (Knight and Bochenek, 2007). The thirty-nine were released after thirteen days and dubbed a “public nuisance” by the police, portending a trend of the use of the Public Offenses Act<sup>7</sup> to target, charge, and fine LGBTI people and others and reinforce a climate of fear surrounding interactions with law enforcement (Knight, 2015: 32).

A week later the government entities named in the petition began to respond. The Ministry of Home Affairs (MoHA) denied the petitioner’s argument on two grounds: that Nepal has “not framed any law to take action against the homosexual persons,” and that “there is no clear legal provision to take action against homosexual persons under Number 4 of Bestiality” (Knight, 2015: 20) The Kathmandu District Administration Office, which is headed by the Chief District Officer (CDO) responded with the same arguments. The cabinet secretary wrote on behalf of the Prime Minister and the Council of Ministers: “What activities and proceedings of this Office have violated which of his particular rights ... The writ petition annulment is worthy of annulment. I request for its annulment.” And the Secretary of the Ministry of Law, Justice, and Parliamentary Affairs dismissed the petition on similar grounds that the Law Ministry had in no way violated the petitioner’s rights, and that legal

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<sup>7</sup> Some Public (Crime and Punishment) Act, 2027 (1970), NEPAL LAW COMMISSION, [http://www.ncf.org.np/upload/files/182\\_en\\_somepublic-crime-and-punishment-act-2027-english.pdf](http://www.ncf.org.np/upload/files/182_en_somepublic-crime-and-punishment-act-2027-english.pdf)

mechanisms for addressing bestiality were sufficient and unobstructed, so no change to the law was necessary (ibid).

However, the Supreme Court deferred hearings for this case several times, pushing the date back by months. In the wake of the initial media attention, violence toward LGBTI people increased. “Public opinion in Kathmandu can be infectious and create a certain amount of permissiveness regarding bad behaviour from authorities,” a political observer noted (Knight, 2015: 21). On February 1, 2005 King Gyanendra suspended Parliament, appointed himself the head of a new government, locked up several influential political leaders, and instituted martial law in the name of controlling the Maoist insurgency. BDS began to call attention to an uptick in harassment of and attacks on transgender people in particular and galvanized international support by reaching out to contacts in human rights organizations to draw attention to the violence (ibid).

The large and influential UN presence in Nepal gave BDS a unique and novel advocacy target. By 2005, the United Nations Mission in Nepal was one of the largest UN human rights field operations in the world (Malone and Pradhan, 2012). Meanwhile the United Nations itself was slowly warming to discussions of sexuality and sexual rights and the incorporation of sexual orientation and gender identity (SOGI) in human rights standards<sup>8</sup>.

In 2006, LGBTI rights activists documented another uptick in attacks against LGBTQ people, especially in Kathmandu. In what Human Rights Watch would call a “sexual cleansing drive” by the police in 2006, metis were frequently the targets of police violence and harassment. The campaign targeting LGBTQ people continued for months, resulting in multiple arrests of BDS outreach workers (Knight, 2015: 21).

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<sup>8</sup>from sexual abuse in the Convention on the Rights of the Child (1989). Relegated to implicit discussions about health rights, family rights, or reproductive rights, scholars have argued this construction left little space for anything other than heterosexual reinforcement of social norms. Annexed under reproductive rights, sexuality made fleeting appearances in various development charter drafts over the next few years, was occasionally used as a straw-man bargaining chip for other issues, and was usually stricken from the final record by states who openly opposed either homosexuality, female autonomy, or both. Francoise Girard, *Sex Politics*

Ultimately, the Supreme Court rejected the petition, citing the government agencies' objections <sup>9</sup>.The culmination of local and international outcry around the legal case, the visibility of LGBTI rights violations under the conditions of the conflict, and the emergent development agency engagement with SOGI-rights globally and in Nepal were transforming the political and legal landscape (Knight, 2015: 22).

### 3.3.2 The Supreme Court Verdict of 2007

LGBTI activists, led by BDS, Mitini Nepal, Cruise Aids Nepal, and Parichaya Nepal, returned to the Supreme Court proactively in April 2007 to file their own case. The petition asked the court to force the government to end its discriminatory policies and practices in terms of sexual orientation and gender identity. *Sunil Babu Pant and Others v. Government of Nepal and Others* called for the abolishment of laws discriminating against LGBT individuals, the establishment of a committee to study the possibility of allowing same-sex marriage, and the legal recognition of a “third gender” (UNDP, USAID, 2014: 27).

Said Hari Phuyal, the lawyer who represented the LGBTI organizations in the case: “Our purpose was simple—we didn't expect anything big, just a show cause from the court to force the Nepal government to tell us why they support this discrimination. Why is there discrimination against these people?” Phuyal said it took a three-pronged argument to convince the court: human rights, comparative case law, and a constitutional example. He specifically referenced *Goodwin v. the United Kingdom*, a landmark case at the European Court of Human Rights, and South Africa's 1994 Constitution, the first in the world to mention sexual orientation (Annapurna, 2004).

“At the end of that, the judge still said he was going to have trouble writing the decision, but the way he said it we knew he was going to write a positive decision. So we gave him *amicus curiae* from experts like Human Rights Watch” (Knight, 2015: 22).

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<sup>9</sup> It is worth noting that court precedents around thorny socio-political issues have not always been overwhelmingly positive in the immediate sense. For example, a landmark gender and land inheritance rights case in 1995 (*Mira Dhungana v. Ministry of Law and Justice, NKP, 1995/2052, Vol. 37, No. 6, p. 462*) resulted in the Supreme Court declaring fundamental differences between men and women and deciding that women have two roles—as daughters and as wives—before sending the deliberations to the parliament. Nonetheless, legal scholars have “succeeded in opening the door of Nepal's apex court to matters of gender justice.”

In its curiae, Human Rights Watch explained that the UN Human Rights Committee's 1994 decision in *Toonen v. Australia*: ““adult consensual sexual activity in private is covered by the concept of ‘privacy,’” while noting that domestic moral opinion condemning homosexuality is an insufficient reason to permit an exception allowing the criminalization of homosexual acts. “Moral issues [cannot be] exclusively a matter of domestic concern” (ibid).

The initial decision issued by the court on December 21, 2007 (and the subsequent full decision drafted the following year) was an overwhelming victory for the petitioners. A leading women's rights activist called it “a historic victory” (Basnet, 2007) as the court vehemently demanded the government eliminate discriminatory laws. The Court's requirement of equal space for a legally-recognized third gender category stood out as a major gain and international precedent. The case stated:

*If any legal provisions exist that restrict the people of third gender from enjoying fundamental rights and other human rights provided by Part III of the Constitution and international conventions relating to the human rights which Nepal has already ratified and applied as national laws, with their own identity, such provisions shall be considered as arbitrary, unreasonable and discriminatory. Similarly, the action of the state that enforces such laws shall also be considered as arbitrary, unreasonable and discriminatory* (Knight, 2015: 23).

This verdict in December 2007 has been the most prominent and visible legal and policy victory for LGBT people in Nepal. The ruling had numerous implications. It clearly placed LGBT issues within the discourse of human rights. The Supreme Court verdict acknowledged that LGBT individuals should enjoy the same legal rights as other citizens, calling for several sweeping protections of LGBT citizens, and enacting anti-discrimination laws to protect LGBT persons (UNDP, USAID, 2014: 27). With judgments recognizing rights that LGBT people deserved as citizens, citizenship became the basis for the court to advocate for equal rights, thus avoiding a framing of “special” or “new” rights. LGBT rights were also positioned as being in accordance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR). The Supreme Court decision also affirmed the state's position as a regional and international model for promoting the fundamental rights of individuals (ibid).

Bala Ram KC, the then Supreme Court Justice who was the primary author of the decision in this case, recalled:

*Concerning marriage, I thought it is not the business of the government to peek inside the room and see if two men are occupying the same bed or two females are occupying the room. It is not the duty of the government or the right of the government to look in there and see if they are having sex or whatnot. They must have the right to enjoy their lives and they must have the right to marry also (Knight, 2015: 23).*

At this time, same-sex marriage was nationally legal in five countries—the Netherlands, Canada, Belgium, South Africa, and Spain. More than eighty countries criminalized same-sex content (though an exact count is complicated)<sup>10</sup>. In this context, Nepal’s Supreme Court ruling was an unflinching commitment to LGBTI legal protections and marked a landmark victory that resonated around the globe (ibid).

Many LGBT rights advocates viewed Nepal’s progressive ruling especially in the Global South as a model on how advocacy can achieve political and social change. South Africa is the only other country extending comparable constitutional protections and recognition to LGBT people. However, challenges still remain in the implementation of the rulings on same-sex marriage and anti-discrimination at the policy level and in spirit.

Notably, the use of human rights language and international precedent used in Nepal showcased the potential for international law to inform national policy. Indeed, the Supreme Court legal success in Nepal holds promise for other countries seeking similar change, with the powerful ruling serving as a potential comparative model for formal legal protections elsewhere (Knight, 2015: 23)

Many felt the Court decision had a large impact on public opinion. Said KC, the retired justice: “The Nepal Supreme Court influences public opinion a lot. It doesn’t influence the government very much, the government is always reluctant to implement our decisions. But the people and the society always come forward after the decisions” (ibid).

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<sup>10</sup> Human Rights Watch, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism,” 2008, [http://www.hrw.org/sites/default/files/reports/lgbt1208\\_web.pdf](http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf)



Explained a BDS staff member:

*Once the Supreme Court decision said they supported this movement, people followed it. The movement has been successful like the Dalit<sup>11</sup> movement in India. There they got reservations and quotas, those aren't here yet for LGBTI but it's sort of like the same thing—they've made public space for themselves, made people understand the marginalization and the need for their inclusion (Knight, 2015: 23).*

In the wake of the decision, activists began carving out social space based on the instructions of the decision, most notably the introduction of a legally-recognized third gender category. Creating logistical recognition for a third gender category was an ambitious project, but allowed for several steps toward practical implementation to be taken, each of which has been heralded by Nepali activists as meaningful boons for protection and access. For example, metis who presented as feminine have reported in the past that in certain social spaces they were now able to “get the ladies’ discount,” signifying a cultural legibility and degree of respect (Tamang, 2003). However, discrimination against gender-variant people such as metis or transgender people remained rampant. Activists saw the implementation of a third gender category—and its full protections—as a necessary next step (Knight, 2015: 25).

Despite enthusiasm, the legal recognition of a third gender was novel and complicated, and few models existed anywhere else in the world (ibid).

Introduction of the third category in administrative systems ranging from voter rolls to the 2011 federal population and housing census (Republic, 2011) to citizenship certificates all posed unique challenges. Inspired by the progressive self-identification-based gender identity policies in New Zealand and Argentina, BDS helped the Ministry of Home Affairs to draft its policy, specifically targeting citizenship certificates, which are crucial for many basic functions in daily life and, for the first time, required for voter registration in the 2013 election<sup>12</sup>. Much like the

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<sup>11</sup> According to the National Campaign on Dalit Human Rights, “The word “Dalit” comes from the Sanskrit root dal- and means “broken, grounddown, downtrodden, or oppressed.” Those previously known as Untouchables, Depressed Classes, and Harijans are today increasingly adopting the term “Dalit” as a name for themselves. There are an estimated 170 million Dalits in India.

<http://www.ncdhr.org.in/>. Human rights violations on the basis of Dalit caste status have been well-documented, for more reading see: “Hidden Apartheid Caste Discrimination against India’s ‘Untouchables,’” Center for Human Rights and Global Justice and Human Rights Watch, February 2007, [http://www.hrw.org/sites/default/files/reports/india0207webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/india0207webwcover_0.pdf)

<sup>12</sup> IRIN, “Nepal: Undocumented residents excluded from state services,” May 17, 2012, <http://www.irinnews.org/Report/95469/NEPAL-Undocumented-residents-excluded-from-state-services>

legal cases brought before the Supreme Court, the combination of local lived experiences and international examples informed advocacy and, later, policy implementation (UNDP, UNAIDS, 2015: 31).

Nepali LGBTI activists continue to undertake tremendous work to garner inclusion on official government registers and programs, including the 2011 census, and have even lobbied international actors in Kathmandu to be more inclusive. Securing the rights guaranteed under these laws has remained elusive, and as of 2012, only two citizens had received a third-gender identity card<sup>13</sup>. An internship for an LGBTI person at the National Human Rights Commission has been established, reflecting an increase in visibility and access<sup>14</sup>. Other governmental and non-governmental entities have started to include a third gender category as well. For example the Federation of Nepali Journalists has pledged to include the third gender in its programming documents<sup>15</sup>; the Department of Prison Management has planned to construct separate detention cells for third gender detainees<sup>16</sup>; and the arrival and departure forms at the international airport added a third gender tick box. “It means a lot that our government is now counting us, but that data has to lead to action—we are here, now we are proving we are here through their methods, and we have to be included by everyone,” said Pant (Knight, 2015: 25).

In the wake of the 2011 census, Blue Diamond Society partnered with The Williams Institute of the University of California at Los Angeles to pilot a follow-up survey of a sample of sexual and gender minorities in Nepal. The survey data revealed patterns of discrimination and abuse, socio-economic disparities among sub-populations, and that the population sampled used twenty-one different sexual orientation and gender identity terms to refer to themselves—including but not limited to third gender (ibid).

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<sup>13</sup>For example, the United Nations office in Nepal now includes measures about sexual-orientation and gender-identity-based workforce diversity in its national surveys

<sup>14</sup>IDLO/UNDP, “Nepal: Assessing the Capacity of National Human Rights Institutions in South Asia to Address Discrimination and Human Rights Relating to HIV, Sexual Orientation and Gender Identity,” June 2012, <http://regionalcentrebangkok.undp.or.th/practices/hivaid/docs/HIV-2013-NHRI-Background-Brief-Nepal.pdf>

<sup>15</sup>Pahichan Media, “FNJ to include sexual minorities in its planning projects,” November, 2014, <http://pahichan.com/fnj-to-include-sexual-minorities-in-its-planning-projects/>

<sup>16</sup>Pahichan Media, “DoPM to construct separate lock-ups for third gender inmates,” November, 2014, <http://pahichan.com/dopm-to-constructseparate-lock-ups-for-third-gender-inmates/>

### 3.4 Political Representation and Constitutional Reforms

As Nepal emerged from war, there were more political questions than answers. The country had seen swells of populism before, but cries of “New Nepal” this time reflected widespread sentiment that change was at the people’s fingertips. LGBTI activists positioned themselves as part of the broader struggle—from street protests, to engaging with post-apartheid South Africa as a gold standard, to endeavouring to gain political representation for their minority population (Knight, 2015: 29).

In 2006 citizens filled city streets across the country, demanding an end to the monarchy and a “New Nepal” in a movement described as “neither fully planned nor fully spontaneous” (Asia, 2006). The Comprehensive Peace Accord signed by the government and the Maoist party in November 2006 brought the ten-year armed conflict to a formal close. LGBTI organizations and individuals joined in the street marches and other activities (Schoffman, 2006) with ambitions to shape the country’s new constitution. “This is a grey time,” Pant told the International Gay and Lesbian Human Rights Commission (IGLHRC) in 2007, “it’s an unclear time, we don’t know what will happen. But it’s also a hopeful time, because lots of things are changing<sup>17</sup>. As Manjushree Thapa noted, “It is not the Nepali way to settle ... glaring questions ahead of time; the country is inexorably in the throes of a slapdash, last-minute, make-it-up-as-you-go ethos” (Thapa, 2008). And so went the transitional politics with which LGBTI activists were beginning to engage (Knight, 2015: 29).

In January 2007, in anticipation of June elections, civil society groups organized a conference called “Nepal’s New Constitution and the Fundamental Rights of Minorities.” LGBTI activists invited South African Justice Edwin Cameron, the country’s first openly gay and openly HIV-positive judicial leader. Cameron spoke passionately about South Africa’s 1994 constitution and outlined the subsequent steps—primarily court decisions—the country had undertaken to make the constitutional promise a reality (Knight, 2015: 30). Discussing South Africa’s post-apartheid negotiations on how to shape justice and the state, he expressed hope for Nepal:

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<sup>17</sup>International Gay and Lesbian Human Rights Commission (IGLHRC), “A Celebration of Courage,” 2007, <http://www.iglhrc.org/sites/default/files/222-1.pdf>

*Nepal has had to walk a painful and fraught path to come to this point in negotiating its own constitutional future. That pain, and the depth of its struggle, may have a meaning. They may signal a lesson about how inclusive Nepal's future commitment to justice and equality could be (Knight, 2015: 30).*

Cameron's speech set the stage for what he admitted was a difficult but crucial path to including LGBTI people in basic rights protections:

*It is easy to profess that there shall be justice for women and minority cultural, religious and ethnic groups. No self-respecting constitution maker anywhere would put these in dispute. What is more difficult is to fulfil that commitment in the case of unfashionable, unpopular and socially reviled groups. These include gays and lesbians, transsexuals, transvestites, intersexed and transgendered persons. For homosexuality and other non-abusive forms of sexual variance test the fundamental core of human rights philosophy. A society that aspires to respect human rights cannot disrespect people because of sexual orientation (ibid).*

During the same programme, the Office of the High Commissioner for Human Rights (OHCHR) –Nepal spokesperson delivered a speech on a human rights day program organized by BDS in which he encouraged the National Human Rights Commission (NHRC) to pay attention to the violations of the rights of sexual minorities and BDS to continue supplying information about violations to UN bodies (ibid). The European Union (EU) urged the NHRC to pay particular attention to outreach to marginalized groups, including “third gender people” (ibid).

After delays and negotiations, Nepal's new governmental structure was decided. A 601-member elected body would serve as both Constituent Assembly and Parliament. This meant that the electoral body would both govern the country and define the new constitution. The potential was clear: the composition of Parliament could, for the first time, include representation from ethnic and sexual minorities, as well as women. In the lead-up to the election, political volatility continued and LGBTI rights activities drew attention to scapegoating and other anti-gay actions and rhetoric on the part of political parties, including a famous instance where a Maoist leader called homosexuals “pollutants” (Knight, 2015: 31) Parties assessed the landscape for available candidates, and activists pressured parties to include their issues in their manifestos, successfully garnering explicit support from three parties including the Maoists (Becker, 2013). “We were making decent progress, but we knew that given

the instability, and the likelihood that it would continue for some time, that we needed to get involved in Kathmandu politics,” Pant said (*ibid*).

The elections were pushed to April 2008, but by then parties had warmed and a group of gay men stood confidently for the election. Wrote one journalist: “Pant feels he has a good chance of winning, saying there are hundreds of thousands of gay and transgender voters across the country to whom he will appeal” (Knight, 2015: 30). On April 10, 2008 election results were announced and the Communist Party of Nepal (United) had garnered 154,968 votes, winning them five seats under proportional representation in the new Constituent Assembly<sup>18</sup>. The party called Pant and asked him to take one of the seats.

Pant joined what Martin called “Nepal’s most representative elected body to date,” referencing the inclusion of people across caste, gender, ethnic, and other categories<sup>19</sup>. Within months of the opening sitting of the twenty-five-party strong assembly, however, suspicion increased that inclusiveness was superficial. Politically elite men haggled and horse-traded over power, and the assembly meetings were routinely postponed (Knight, 2015: 31). Throughout the four-year tenure of the assembly, attendance at votes—especially by key leaders—and genuine obeisance for the rules of procedure within debates was abysmal (*ibid*).

In spite of stalemates in Parliament, Pant’s presence had almost immediate impact. On an international level, it vaulted him to the forefront of gay politics and got him invited into increasingly powerful (and notably rights-oriented, not HIV-oriented) forums<sup>20</sup>. “At the very least I got in to the government buildings more easily,” he said<sup>21</sup>. His ascent to political office and exposure to the functioning of political power had widespread implications for the movement, both explicitly and more subtly (Knight, 2015: 32). Almost immediately after the Constituent Assembly (CA) took office, Pant began meeting with powerful ministers, especially those from parties that

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<sup>18</sup> Election Commission of Nepal, Proportional Representation voting results: <http://www.election.gov.np>

<sup>19</sup> UN Dispatches from the Field, “Nepal’s legislature: Setting the gold standard on inclusion of minorities,” [http://www.un.org/News/dh/infocus/nepal/nepal\\_legislature.htm](http://www.un.org/News/dh/infocus/nepal/nepal_legislature.htm)

<sup>20</sup>Victory Fund Annual Report 2008: [http://www.victoryfund.org/files/victory\\_annual\\_08.pdf](http://www.victoryfund.org/files/victory_annual_08.pdf) See also: Centre for Advocacy and Research, “A Framework for Media Engagement on MSM and Transgender Persons in South Asia: Engagement Framework, Literature Review and Case Studies,” New Delhi, 2013, [http://asia-pacific.undp.org/content/rbap/en/home/library/hiv\\_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html](http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html)

<sup>21</sup> Victory Fund Annual Report 2008: [http://www.victoryfund.org/files/victory\\_annual\\_08](http://www.victoryfund.org/files/victory_annual_08)

had pledged support for LGBTI people in the run-up to the election. Babu Ram Bhattarai, a leader in the Maoist movement, assumed the office of Finance Minister and became an early advocacy target for Pant. “It was in his party manifesto already, it was just a matter of making sure words became action,” said Pant (Karki, 2012).

In September 2008, Bhattarai delivered his first budget speech to the legislature, saying: “The state will accord special priority to solve the core problems of Nepali people relating to sexual and gender minorities and a common house for 50 people will be provisioned to live together for their socialization” (UNDP, USAID, 2014: 39). Such strides were not only significant because they established formal recognition of sexual and gender minorities and associated issues, but because they stood as statements of powerful support in an environment in which informal negotiations and allegiances often held more weight in decision-making than formal mechanisms or procedures (Knight, 2015: 32).

Pant’s election was a big step forward for the LGBTQ community. Said a development partner who has worked with BDS for several years:

*Sunil as a Member of Parliament turned many things in his favour and made things better for the LGBTI community. It got him access to all of the powerful people, both to speak with them and to see them and how they behave when the public can’t see them. He is a soft man. He can have dialogues with them and slowly convince them without the same threat as a street protest, which they may just ignore. Access to politicians and bureaucrats inside Singha Durbar [government compound in Kathmandu] was a major difference from what he could previously accomplish (Knight, 2015: 33).*

For the LGBTI activist community, Pant’s election was an instant symbolic victory. Said one BDS staff member: “When we announced [four years ago] that we will also have a representative, this community became extremely happy. When we nominated Sunil and he won, it was a moment of overall happiness for us, right from the time of the establishment of the Blue Diamond Society”<sup>22</sup>.

In a 2011 op-ed in *The Kathmandu Post*, Pant wrote that while the Constituent Assembly’s term had been largely disappointing, he felt he was able to change minds and persuade some other members to support LGBTI rights (The Kathmandu, 2011).

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<sup>22</sup> Blue Diamond Society press conference, transcribed by Astraea Lesbian Foundation for Justice, July 3, 2013

Pant's presence and conversations put LGBTI people on the agenda and sparked discussion that would not have occurred otherwise. Activists have credited similar tactics of strategic participation by LGBTI individuals in international arenas, such as in the negotiations with governments over the 1995 Beijing Platform for Action's "Paragraph 96," the right of women to control their sexuality (Knight, 2015: 59).

Despite the promise, on May 27, 2012, Nepal's Constituent Assembly was dissolved, having failed to draft the country's new constitution, which, among other things, had promised to address the concerns of many marginalized groups. The inability to produce the charter has been attributed to political parties retaining "the well-documented dysfunctions that hobbled democratic politics throughout the 1990s," including reliance on patronage networks and corruption (Knight, 2015: 33). Without a new constitution, many LGBTI activists felt deflated, and the actual guarantees of equality for LGBTI people and marriage equality have been threatened in practice. Still, the precedent set by the Supreme Court decision and the political in-roads made during this time have provided a valuable blueprint for spurring policymakers to implement LGBTI-friendly policies in some areas (Knight, 2015: 34).

New elections were held on November 19<sup>th</sup>, 2013 to the Second Nepalese Constituent Assembly and political leaders pledged to draft a new constitution within a year. The new assembly committed that the new constitution would be promulgated on January 22<sup>nd</sup>, 2015. However, due to continued differences on key issues including system of governance, judicial system and federation issues like number, name, and areas of states to be carved, the constitution could not be finalized and promulgated in time. The constitution finally came into effect on September 20<sup>th</sup>, 2015. This constitution was another great milestone for the realisation of the rights of the LGBTQ.

### **3.5 Political Affairs in Nepal**

Nepal's protracted post-conflict transition to a republic has been fraught with political in-fighting among powerful elites. The bickering in Kathmandu had stalled several processes, including the drafting of a new constitution until 2015, leading marginalized groups to perceive the government as out of touch, and to opt for street

movements, including protests and violence<sup>23</sup>. In the absence of a predictable and stable government, neo-patrimonial relationships continue to dominate many of the decision-making processes for officials, activists, and citizens<sup>24</sup>. Despite—or perhaps as a result of—ever-increasing amounts of foreign aid money pouring into Nepal and “rapid social change” becoming popular rhetoric for the upper class elite, people in powerful positions have often retained their desire to maintain a traditional framework for the country, including by propagating patriarchal norms (Mishra, 2007).

Nepali politics is becoming more inclusive of LGBT issues and people, particularly after Sunil Babu Pant became Asia’s first openly LGBT national parliamentarian. However, political hyper partisanship has resulted in a failure to deliver a new constitution since 2008. This has created instability and further political gains for LGBT people are unlikely while the gains already achieved stand a real risk of being reversed (UNDP, USAID, 2014: 96).

Political participation has borne mixed results, and the uncertain political future of the country and constantly shifting alliances continue to affect how LGBTI rights activists engage with political parties and how political parties refer to and treat sexual and gender minorities in public. Political parties have been accused of using sexual and gender minorities as a “vote bank” to gain votes for election campaigns (Knight, 2015: 48). After elections, they do not follow through on their promises and there are no mechanisms in place to hold them accountable (UNDP, USAID: 2014). The LGBT community in reality feel that political party representatives hardly understand the issues and sentiments of the LGBT community despite making grand statements about our rights.

On one hand, public courtship of LGBTI candidates in the lead-up to 2013 elections by the Nepali Congress and United Marxist-Leninist (UML) party, two major opinion-shaping parties,<sup>25</sup> has signalled for some a new era for acceptance of LGBTI

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<sup>23</sup> <http://www.crisisgroup.org/en/regions/asia/south-asia/nepal/op-eds/neelakantan-nepal-moment-of-truth.aspx>

<sup>24</sup> <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>

<sup>25</sup> <http://www.crisisgroup.org/en/regions/asia/south-asia/nepal/234-nepals-constitution-ii-the-expanding-political-matrix.aspx>



people<sup>26</sup>. Women’s parliamentary representation has boomed from between three and six percent from 1990 – 2002 to 33% since 2009<sup>27</sup>. However, reports of persistent sexism in political negotiations have called out the lag between formal and substantive representation (Delaney, 2011).

A significant trust gap, frequently described as the “cooling of relations between the state and citizen,” remains. For example, Bhattarai, the man who as finance minister proudly included a budget line for sexual and gender minorities, years later referred to an opposition party, the United Marxist-Leninist (UML) party as, the “tesro lingi” (third gender) party, which observers have interpreted as masculine posturing or, as one columnist wrote: “The metaphor, a prime example of male chauvinism, stuck. PM Bhattarai did not even have to explain what he meant by it (Knight, 2015: 44). Everybody interpreted it according to his or her prejudice. Tesro lingi meant being unnatural, a threat to male masculinity, indecisive.” (Adhikari, 2014) This came within months of his reportedly pandering to LGBTI activists with promises to implement the court-ordered third gender category on citizenship certificates in order to garner Pant’s vote for his bid for Prime Minister—a promise he ultimately failed to keep while in office (Knight, 2015: 44).

In this context, LGBTI rights activists praise parties when freshly elected, welcoming their commitments to inclusion, and condemn political actors strategically when they failed to live up to their promises on LGBTI rights (Pant, 2011). At the LGBTI political candidacy press conference in July 2013, one candidate said: “Today, things have gone wrong in the country because of corruption. Today, things have gone wrong in the country because of irregularities. We want to bring an end to all those vices. We want to clean up this country; we want to make it fair; we want to make it the Nepal you and I all aspire for”<sup>28</sup>.

The second Constituent Assembly elections in November 2013 were contested by more than 60 prominent LGBT leaders. However, none of the openly LGBT candidates who stood for under the first-past-the-post competitive quota system

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<sup>26</sup>Republica, “UML expresses commitment for including rights of third gender,” [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=59146](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=59146)

<sup>27</sup>UNData, Seats held by women in national parliament, percentage: <http://data.un.org/Data.aspx?q=nepal&d=MDG&f=seriesRowID%3A557%3BcountryID%3A524>

<sup>28</sup> Blue Diamond Society press conference, Union House, Anamnagar, Kathmandu, transcribed by Astraea Lesbian Foundation for Justice, July 3, 2013.

managed to win a seat (UNDP, USAID, 2014: 35). As the candidacy press conference<sup>29</sup> wound to a close, Manoranjan Kumar Vaidya stood at the podium and charted the movement's success:

*Eleven years ago, when we came out in public, we were not treated as humans. We were not even given the status of animals.... Whether I win or lose, that's not a big deal for me.... What I want is that the next Constituent Assembly election elects an assembly of truthful, impartial people, who are capable of doing something for the country and that [our] rights are ensured in the new constitution. We are seeking to get there for our rights, our human rights and the rights we have been entitled to<sup>30</sup>.*

Prior to the 2013 election, Pant and other LGBTI activists were courted by all the major political parties<sup>31</sup>. He and several hundred other LGBTI people eventually joined the CPN-UML with promises from the party to reserve between one and five seats for LGBTI representatives. The UML went on to secure 175 seats in the new assembly, however just before the election it announced that it would not put forward any candidate who had served in the previous CA, ruling Pant out (Knight, 2015: 45).

Laxmi Ghalan, a lesbian activist and Mitini founder, fought the election from Makawanpur district for the royalist Rastriya Prajatantra Party. *"The parties used us as a vote bank, only to exclude us,"* Pinky Gurung, BDS's chairperson, told reporters at a press conference (ibid). Badri Pun, a transgender man, who attempted to be nominated as a proportional representation candidate from Myagdi-2 representing the Communist Party of Nepal (UML) also lost. Furthermore, no openly LGBT person –

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<sup>29</sup> At the press conference, a leaflet with the LGBTI community's demands was distributed, reading: In the context of the forthcoming election to the Constituent Assembly, our demands to the political parties, the Election Commission and the Government of Nepal are as follows: 1. Create policies, legislation and an environment in a way that the entire sexual and gender minority community will get to vote. 2. Ensure when launching/introducing the Election Act that Nepali citizens, who have come of age and belong to the sexual and gender minority community, will get to contest as candidates with their respective identities. 3. Change the political parties' policy to ensure the inclusion of the sexual and gender minority community during the selection of candidates. 4. Include a mention in [political] parties' documents, including constitution, manifesto and constitutional concept paper, to ensure the rights, opportunities and inclusion of the sexual and gender minority community. 5. Facilitate the easy implementation of the Government of Nepal's decision to issue citizenship certificates to members of the sexual and gender minority community under the "others" category. 6. Make no discrimination of any kind against the other citizens in terms of the services, facilities, opportunities and responsibilities they are entitled to by the State. 7. Include the sexual and gender minority community in the [political] party structures from the central level to the local level. Thank you. Sexual and Gender Minority Family Blue Diamond Society

<sup>30</sup> BDS press conference, transcribed by Astraea Lesbian Foundation for Justice, July 3, 2013

<sup>31</sup> <http://bluediamondsociety.wordpress.com/2013/07/04/62-lgbt-candidates-in-nepal-to-run-in-upcoming-elections/>

including Sunil Babu Pant who was previously a nominated Member of Parliament – managed to get nominated under the proportional representation quota to be an MP (UNDAP, USAID, 2014: 35). Therefore Nepal’s large 601-person parliament, none of the current MP’s are openly lesbian, gay or transgender. Many community members have expressed their concern that it is this lack of representation which have deprived them of a voice in the nation’s top legislative body. Furthermore, there are also no senior openly LGBT government bureaucrats or political appointees (ibid).

LGBT people are allowed to serve in the security forces. However still this is another key area of the state where in more inclusive policies are required so as to make LGBT people safe and feel more welcome (UNDP, UNAIDS, 2014: 32). The case of two Nepal Army soldiers who were accused of having a lesbian relationship and summarily arrested, imprisoned, and dishonourably dismissed in 2007 because of their sexuality attracted much negative publicity for the army (Haviland, 2008). The Ministry of Defense and Nepal Army need to conduct a review of their policies and procedures and make the necessary changes to avoid incidents like this in the future. The army is one of the oldest and most stable institutions in Nepal. So it needs to come under much more scrutiny and pressure from activists. They need to change their policies to be more LGBT-friendly.

There should be openly allowing of LGBT individuals into the Nepal Police and the Armed Police Force in order to sensitize police officers on sexual minority and gender identity issues. Additionally, police officers should be provided sensitivity training about the LGBT and other minorities. They can be thus aware and also respectful of the diversity as they are regularly and closely in interaction with civilian populations. This could decrease police violence against the LGBT community, especially transgender women, including those who engage in commercial sex work (UNDP, USAID, 2014: 37).

Much views of the individuals with whom I had conversation were that until the sexual and gender minorities themselves accept and speak up about their identities in greater numbers, LGBT issues will never gain the attention they deserve. There is a big absence of a critical mass of voices. However, it was recognized that coming out is not easy, and before this can happen, greater political activism and social changes is necessary (UNDP, USAID, 2014: 39).

### **3.6 Government**

In contrast to the challenges in everyday life, there is a high level of visible advocacy for LGBT rights at the political level, particularly in the area of policies and legislation. Nepali LGBT activists and NGOs were successful in advocating for the inclusion of gender non-confirming identity “others” on official government registers and programs, including the 2011 census (Knight, 2014: 1), policies about the educational curriculum, and the Passport Regulation Act. The Government of Nepal has also provided a small amount of annual funding for LGBT issues since 2011<sup>32</sup>. Furthermore, the Ministry of Health and Population and the National Center for AIDS and Sexually Transmitted Infections Control (NCASC) have in general been very supportive of LGBT rights and health issues. The National Human Rights Commission (NHRC) established an internship opportunity for an LGBT individual. Community-based LGBT organizations have been able to construct gender-neutral public toilets in some cities in some cases using government funds (Knight, 2012: 3).

However, in the ground zero reality, the LGBT people are at a much loss. They do not receive the same government quotas and special favours as with other recognized minorities. Excluded and marginalized communities such as Dalits, Janjatis, Madhesis, Muslims, and Tharus are recognized as minorities. They have special needs, and also a quota system that benefits minorities and ensures social inclusion. LGBT people are underrepresented in state institutions and a quota would be a useful tool to advance sexual and gender minority visibility and rights. (Personal communication with, a homosexual college student on September, 2017 at Dharan) puts up that despite being recognized as sexual minorities, they have not had the chance to enjoy their full rights, unlike the Dalits, Janajatis, and the physically disabled.

### **3.7 Protection of Rights of LGBTQ People**

The development of laws and policy that promote and support LGBT advocacy is closely related to the events in Nepal’s political affairs over the 1990’S and 2000’s. Much of the progress on achieving LGBT rights was made after the restoration of

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<sup>32</sup> <http://ilga.org/ilga/en/article/ozvxE5o1JN>

multiparty democracy in May 2006 and the promulgation of an interim constitution shortly thereafter (UNDP, USAID, 2014: 42).

### 3.7.1 Legality of Homosexuality

Same-sex relationships and identifying oneself as a lesbian, gay, bisexual or transgender have never been criminalized in Nepal. However, the current draft Civil and Criminal Code (which will update and replace the current “Muluki Ain”), prepared by the Ministry of Law and Justice has a very regressive definition of sexual acts. It defines it as occurring between a man and a woman (penile-vaginal sex). Thus ignoring the homosexual relationship. Unnatural sex is not defined in the Civil and Criminal Code. The law on which this section is similar to the Indian Penal Code (Section 377)<sup>33</sup> which defines unnatural sexual offenses as voluntary “carnal intercourse against the order of nature with any man, woman or animal.” It should be made clear that unnatural sexual acts will not be interpreted to criminalize consensual adult same-sex activities and relationships (UNDP, USAID, 2014: 44).

### 3.7.2 Same-sex Marriage

In the 2007 petition to Supreme Court, Pant and Others v Government of Nepal and others supported same-sex marriage claiming, “It is an appropriate time to think about decriminalizing and destigmatizing same sex marriage by amending the definition of unnatural coition.” The Supreme Court ruling ordered an examination of the possibility of same-sex marriage in Nepal.

In the Supreme Court case of Rajani Shahi v. National Women’s Commission<sup>34</sup> the verdict stated: *Individuals can decide as to choosing their ways of living either separately or in partnership together with homosexuals or heterosexuals – with or without solemnizing marriage. Although in the prevailing laws and tradition “marriage” denotes legal bond between heterosexuals (male and female), the legal provisions on*

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<sup>33</sup> <http://www.lawyerscollective.org/vulnerable-communities/lgbt/section-377.html>

<sup>34</sup> The petitioner, a 30-year-old woman named Rajani Shahi, told the Court that she left her husband because she was attracted to other women. Her husband allegedly rejected that claim and sought her return, asking for help from Nepal’s National Women’s Commission to get her back. According to the decision and media reports, the Commission recommended Shahi enter a women’s shelter, but then later transferred her to a facility where women and girls who have been victims of trafficking undergo rehabilitation. In the process of ordering Shahi released from the rehabilitation facility in Kathmandu, the Court discussed her sexual orientation and related rights. Please see Knight, K. et al. New York, 2013

*the homosexual relations are either inadequate or mute [sic] by now*  
(Knight, 2015: 53).

There has been no progress till date on legalizing same sex marriage since the Supreme Court verdict (2007). However several same sex marriages have been performed despite the absence of any official law. These symbolic marriages are not recognized by the state and no respect is given. They have no legal validity within Nepal.

Nepal's draft Civil and Criminal Code that is "Muluki Ain" still refers to marriage as between only a man and a woman. The current proposed revisions do not include same-sex marriage. Section 70(1) states that marriage is between a man and woman and that the man has to be at least 22 years old and the woman 20 years old. The LGBT community has expressed grave concern over the revisions. The United Nations system in Nepal is leading the drafting of a joint statement that calls on the Government of Nepal to define marriage as between two consenting adults of any gender and with no age discrimination (UNDP, UNAIDS, 2014: 29).

### **3.7.3 Anti-discrimination**

The 2007 Supreme Court decision had issued directive orders to the Government of Nepal to amend existing laws and to formulate appropriate legislation to protect the rights of sexual minority groups and to not make it discriminatory in anyway. It stated, "Although, there is no distinct law that declares the relation between homosexuals as criminal (it is kept within the definition of unnatural coition), there is a claim that the state mechanism has implicitly contributed to the discrimination created due to negative attitude of the society towards these people which cannot be ignored" (UNDP, USAID, 2014: 30).

A further judgment was issued on 18 November 2008 where the Supreme Court put up that all LGBT persons are defined as "natural persons". It implied that their physical growth as well as their sexual orientation and gender identity (SOGI) and expression are all part of a natural process. There is nothing of unnatural growth or anything deviant. Thus, equal rights, identity and expression must be ensured regardless of sex at birth (ibid).

### 3.7.4 Recognition of Third Gender

*“The 2007 decision by the Supreme Court which recognized a third gender ‘other’ category on citizenship documents is only available to individuals who have not previously applied for citizenship. Those who have already obtained citizenship certificates are unable to change their gender. This infringes the rights of individuals below the age of 18 at the time of the decision as well as to those who already have their citizenship but wish to change it.” (Knight, 2015: 78).*

The Supreme Court’s December 2007 verdict recognized a third gender. Also it was in 2013 that the Home Ministry announced a decision to provide ‘other’ citizenship for citizens who do not wish to be identified as either male or female. So far very few people have been able to obtain the citizenship card with the new self-identified ‘other’ gender identity. Nepali local and district administrations still request proof to certify one’s gender, while the national government only issues citizenship cards with the third category to new applicants (Martinez, 2014). Obtaining a citizenship certificate with one’s chosen gender can be of crucial importance for an individual, because, “[w]hen an individual’s cultural legibility is not affirmed by their identity papers, even everyday quotidian transactions become moments of vulnerability” (UNDP, UNAIDS, 2014: 31).

There can be many possible reasons for the low number of people who have received ‘other’ citizenship certificates. One could be the inefficiencies, insensitivity, prejudice, biased or lack of awareness among the government bureaucracy which may make the third gender people more uncomfortable. Some transgender men and women may wish to identify as male and female and not an “other” gender category with which they have no emotional or practical attachment. There can also be confusion on the part of transgender individuals as they might not be aware of what the ‘other’ category means. In fact, the definition of third gender is unclear and vague. The entire LGBT community is often misrepresented as third gender and many lesbians and gay men do not wish this label to be applied to them (ibid).

An element of confusion in the 2007 Supreme Court ruling is that its ‘other’ category appears to conflate sexual orientation with gender identity, without making a clear distinction. It is a confusing and inaccurate legal category. For example, it was reported that a lesbian in Nepal successfully changed her documentation to reflect her ‘other’ identity (Martinez, 2014).

Transgender women identities are historically more acceptable and visible in South Asia. It may be somewhat easier to achieve equal rights for them on paper – although in practice they might suffer more violence and harassment than other sexual or gender minority communities (UNDP, UNAIDS, 2014: 32). For instance, in India some LGBT activists worry that the recent Supreme Court verdict on transgender rights will mostly benefit transgender women communities (Sharma, 2014). Lesbians and gay men are the less visible identities in South Asia. They may find it harder to be understood by society. Transgender men identities are even more invisible and harder to protect.

Since 2010, Nepal’s Election Commission has allowed people to register to vote as third gender solely on the basis of self-identification. Additionally, the 2011 national census allowed citizens to identify as “third gender.” In practice this has meant very little as the challenges of classifying oneself as third gender included lack of interest or discrimination on the part of census-takers, logistical problems and a flawed data collection process (UNDP, UNAIDS, 2014: 32).

### **3.7.5 Other Laws and Policies**

Even though homosexuality is not illegal, it has been reported that police often utilizes generic laws such as the Public Offences Act (1970) to harass and intimidate LGBT individuals. Human Rights Watch reported in February 2013 that four transgender women were arrested and charged under this Act, “a vaguely worded law that can result in up to 25 days in detention and a fine amounting to more than US\$300”<sup>35</sup>. Many LGBT activists have reported death threats and harassment. Some put this blame on the continued existence of a reference to “unnatural sex” in the draft Nepali Civil Code and the mentioning of sexual act as only between man and woman. This has often been used by authorities as an excuse for harassment, extortion, and refusal of public services. Current sexual assault laws only cover non-consensual sexual intercourse where the perpetrator is male and the victim is female (Knight, 2012). Thus one can see how the assault on a man or third gender person is not taken

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<sup>35</sup> HRW. “Nepal: Climate of Fear Imperils LGBT People.”  
<http://www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people>



up seriously. As such, sexual assault of a man or a third gender person is not considered to be rape, but is treated as a lesser offence<sup>36</sup>.

### **3.8 The Historic 2015 Constitution and its Impact**

Constitution of Nepal 2015 is the present governing constitution of Nepal. Nepal is governed according to the Constitution which came into effect on September 20<sup>th</sup>, 2015, replacing the Interim Constitution of 2007. The Constitution was drafted by the Second Constituent Assembly following the failure of the First Constituent Assembly to produce a constitution in its mandated period<sup>37</sup>. The Constitution was endorsed by 90% of the total lawmakers. Out of 598 Constituent Assembly member, 538 voted in favour of the constitution while 60% voted against it.

Until 2007, LGBT rights in Nepal were not a priority. However, at the end of Nepal's conflict, the changes to the Constitution and the political involvement of transgender activists paved the way for new legislation. The government introduced laws to protect transgender individuals in the workplace. Occasions to celebrate LGBT culture multiplied. Transgender individuals obtained the opportunity to choose their gender marker on IDs, including a gender-neutral option, also known as third gender<sup>38</sup>.

Some minority groups raised black flags in protest, when the Nepal's president signed the country's new constitution. #NotMyConstitution trended very much on social media. The national charter was imbued with aspirations of inclusion that have long been brewing in Nepali society, including a people's movement that toppled the world's last remaining Hindu monarchy in 2008. But the new constitution was delivered by a predominantly high-caste male administration. They ultimately fell short of previous pledges for long-promised state restructuring, enraging many disenfranchised groups, including women and the ethnic minorities<sup>39</sup>.

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<sup>36</sup> Blue Diamond Society (BDS), Heartland Alliance for Human Needs & Human Rights -Global Initiative for Sexuality and Human Rights, "The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal", (Geneva, June, 2013): [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT\\_CCPR\\_NGO\\_NPL\\_14738\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_NGO_NPL_14738_E.pdf)

<sup>37</sup> Time Magazine, "Nepal Has Finally Passed a New Constitution After Years of Political Turmoil".

<sup>38</sup> <http://www.sfcg.org/lgbt-right-nepal-pahunch/>

<sup>39</sup> <https://www.hrw.org/news/2015/10/14/how-nepals-constitution-got-queered>

However for one minority group in the impoverished country of 27 million, there was a silver lining. Nepal became only the 10th country in the world to enshrine specific protections for LGBT people in its constitution. The path to constitutional protection for a group at times openly derided as “social pollutants” was neither linear nor predictable, and took a unique combination of courage and political wisdom. There was quite a struggle in achieving this victory. It is reflected in the rise of Sunil Pant, who in 2001 was an unemployed computer engineering graduate and who seven years later became Asia’s first openly gay national-level elected official when he was voted into the Constituent Assembly — a 601-person chamber charged with drafting the new constitution<sup>40</sup>.

The new constitution explicitly states that “sexual and gender minorities” (SGM) cannot be discriminated against by the state or the judiciary. There is no direct mention of same-sex marriage in the new constitution, but all issues related to marriage in general will be handled in the civil code, which will be revised in the future. Notably, in South Africa, constitutional protections were used as a necessary pathway towards full marriage equality, which could happen in Nepal. With equality enshrined in the constitution, the document provides important legal avenues for LGBT activists fighting to pursue full equality without fear of repercussions<sup>41</sup>.

The new Nepalese constitution, approved by the Constituent Assembly on 16 September 2015<sup>42</sup>, includes several provisions pertaining to the rights of LGBTI people, some of which include<sup>43</sup>:

Article 12 of the new constitution states that people have the right to have citizenship ID that reflects their preferred gender.

Article 18 covers rights to equality and states that the State will not "discriminate [against] any citizens based on origin, religion, race, caste, tribe, gender, language or ideological conviction or any other status."

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<sup>40</sup><https://www.hrw.org/news/2015/10/14/how-nepals-constitution-got-queered>

<sup>41</sup><https://www.hrw.org/news/2015/10/14/how-nepals-constitution-got-queered>

<sup>42</sup> Sharma, Bhadra (2015-09-16). "Assembly in Nepal Approves New Constitution". The New York Times. ISSN 0362-4331. Retrieved 2015-09-17.

<sup>43</sup> "Nepal lawmakers approve first LGBTI protections in new constitution - Gay Star News". 2015-09-15. Retrieved 2015-09-17.

Article 18 also lists LGBTI people among disadvantaged groups that are recognized by the constitution.

The new constitution states: ‘Nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of socially and culturally disadvantaged women, Dalits, indigenous peoples, tribes, Madhesi, Tharu, Muslim, ethnic minorities, backward classes, minorities, marginalized, farmers, workers, youth, children, senior citizens, gender and sexual minorities, handicapped persons, pregnant persons, disabled or helpless, people of backward regions and economically disadvantaged citizens.’

Article 18 also replaces language in the old constitution that references ‘male and female’ and ‘son or daughter’ with gender neutral terminology.

Article 42 of the new constitution lists ‘gender and sexual minorities,’ among groups that will have right to participate in state mechanisms and public services based on the ‘principle of inclusion.’<sup>44</sup> However, the explicit terms "homosexual" or "same sex" are not mentioned in the new constitution<sup>45</sup>.

The constitution went into effect on 20 September 2015<sup>46</sup>. 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 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. The Nepalese government is to issue passports with a third gender option for citizens who do not identify as male or female. The country join neighbour India as one of the few countries that allow for a gender other than male or female to be listed in identity documents. Australia and New Zealand also allow people to be listed as “x” in their passports.

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<sup>44</sup> "Nepal lawmakers approve first LGBTI protections in new constitution". [www.pahichan.com](http://www.pahichan.com). 15 September 2015.

<sup>45</sup> "Nepal approves new constitution". 17 September 2015 – via [www.bbc.com](http://www.bbc.com).

<sup>46</sup> Nepal approves new constitution". 17 September 2015 – via [www.bbc.com](http://www.bbc.com)

Human Rights Campaign (HRC) hailed the passage of a new constitution in Nepal that provides explicit protections for LGBT people from discrimination, violence, and abuse--a historic first for a nation in Asia. Nepal's Parliament endorsed the new constitution on September 16, making it the first constitution the republic has passed since abolishing its 239-year-old monarchy in 2008. In a first for an Asian nation, Nepal has added explicit laws and rights of the LGBT community in its new constitution, but does not recognise same-sex marriage. The Himalayan nation is now the third country in the world, after South Africa and Ecuador, to provide constitutional protection to LGBT individuals<sup>47</sup>.

Under the new constitution, the LGBT community is protected against discrimination, violence and abuse. However, it makes no mention of same-sex marriage, apparently ignoring a recommendation by a panel. Issues related to marriage will still be handled by a civil code. Human rights activists say Nepal has made a start and laid down a path that could culminate in legalisation of same-sex marriage<sup>48</sup>.

Ty Cobb, Director of HRC Global hailed the Nepal Governments step. "This is a momentous step forward for LGBT equality in Nepal. The nation's leadership has affirmed that its LGBT citizens deserve the constitutional right to live their lives free from discrimination and fear," "We congratulate LGBT Nepali's and their allies for this historic victory, and hope to see other nations across Asia and the globe take similar steps to ensure full legal equality for their LGBT citizens"<sup>49</sup>.

In anticipation of the historic occasion, HRC released a one-pager detailing Nepal's new constitution and what it means for the LGBT community in Nepal. Though there is still work left to be done, this new constitution can help foster momentum for the robust LGBT movement in Nepal, and could lead to further progress elsewhere in Asia (HRC, 2015). "This new Constitution makes clear that we can be proud of our LGBT identities, and that we can be proud citizens of Nepal," said Sunil Babu Pant, founder of Blue Diamond Society and Asia's first openly gay federal Member of Parliament. "This victory is just the beginning of our long road towards full equality

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<sup>47</sup> <http://www.ibtimes.co.uk/nepal-becomes-first-asian-nation-include-non-discriminatory-laws-lgbt-community-1520845>

<sup>48</sup> <http://www.ibtimes.co.uk/nepal-becomes-first-asian-nation-include-non-discriminatory-laws-lgbt-community-1520845>

<sup>49</sup> <http://www.hrc.org/blog/in-a-historic-step-nepal-ratifies-new-constitution-that-includes-lgbt-prote>

(HRC, 2015). We are ready to move beyond the discrimination, violence and exclusion of the past, and continue with even greater integrity, responsibility and dedication to contribute to the nation-building process. We will be working together with Nepali and international allies to build our nation, a 'new, inclusive and prosperous Nepal'<sup>50</sup>.

### **3.9 Conclusion**

Nepal's progressive constitution can serve as a model for other countries in South Asia and around the world. Countries need to look upon the working of Nepal's government in relation to development for its LGBT people. BDS works closely with the South Asia Human Rights Association of Marginalized Sexualities and Genders, which facilitates collaboration between it and its counterparts in Nepal and the larger region. Several social and cultural factors have facilitated Nepal's tolerance of LGBTI people, creating a more conducive environment for progressive judicial decisions and constitutional rights. Historically, Nepal has been a diverse, multicultural, and multi ethnic country. One of the most unique characteristic of Nepal is that it was never colonized unlike many of its South Asian neighbours. In other regional countries such as India, Pakistan, Bangladesh, and Myanmar, the Section 377 of the former British penal code which criminalized homosexual acts is still reflected in national legislation and societal norms. And thus Nepal stands tall ahead in its rights and laws for the LGBT people.

Despite its flaws, Nepal's new constitution stands as a place to start for democracy. Same-sex marriage, equal gender citizenship provisions, and the exclusion of minority groups are just a few of the key issues that the government must address moving forward. For the moment, however, the new constitution marks a changing tide for LGBTI rights in Nepal and, perhaps, the region. As Dhakal, the current Executive Director of BDS, explained, "Gaining acceptance in society is a challenge, but the new constitution has provided us with an opportunity"<sup>51</sup>.

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<sup>50</sup><http://www.hrc.org/blog/in-a-historic-step-nepal-ratifies-new-constitution-that-includes-lgbt-prote>

<sup>51</sup> [http://www.huffingtonpost.com/tracy-fehr/nepal-constitution-lgbti-rights\\_b\\_8239360.html](http://www.huffingtonpost.com/tracy-fehr/nepal-constitution-lgbti-rights_b_8239360.html)

## CHAPTER IV

### Social Institutions and Sexual Minorities in Nepal

#### 4.1 Introduction

In this chapter, different aspects of the lives of sexual minorities will be explored. By virtue of this chapter, a small attempt would be made to answer questions like “What aspect of the lives of sexual minorities you want to explore in this research?” This chapter will try to provide insights in to why it is important to understand different aspects of their lives not just one. Thereby, this chapter shall analyse the lived experiences and practices of different aspects of the lives of sexual minorities which are considered nothing more than a forbidden acts or behaviour within the heteronormative structure of the society. This chapter will also explain in details about the role of BDS and media in addressing the issues of LGBT. Almost every corner of the globe has a section of individuals who cannot express their experiences and desires as the dominant paradigm upheld by the society do not recognize it. Sexual minorities belong to this deprived section of the society; they are those individuals who have been stripped of their choices in life, their desires and needs, just on the ground that it does not fit the dominant heteropatriarchal model worshipped by the society. Thus, understanding their lived experiences will not only provide us valuable insight of their lives which has always been ignored, but at the same time it would also help us to examine how hegemonic forces work and dominate the society under its wings of the legality to conduct violence and compulsion in almost every sphere of human lives.

Using Interpretative Phenomenological Analysis (IPA)<sup>1</sup>, this study shall try to understand how the sexual minorities make sense of their experiences and the meanings they attach to themselves and their experiences. From a theoretical parlance, this chapter shall use a postmodern lens in order to understand lived experiences and practices of sexual minorities in Nepal as a reference point. This chapter shall try to explore the underlying discrimination and subjugation of sexual minorities from a post

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<sup>1</sup> It is a research methodology oriented towards exploring and understanding the experience of a particular phenomenon. As a methodology in its own right rather than simply a means of analysing data, IPA involves the detailed examination of participants’ ‘lifeworlds’; their experiences of a particular phenomenon, how they have made sense of these experiences and the meanings they attach to them (Smith, 2004). IPA was introduced by Jonathan Smith, in his seminal paper of 1996, as an alternative but complementary approach to the more established quantitative and qualitative methodologies in the psychology field (e.g. qualitative approaches such as grounded theory, conversation analysis, narrative psychology).

feminist view point and thereby critically analyse the homogenizing categories and fixed boundaries created in the name of identity, rigid sexuality, etc. This chapter will also focus and explain about how the culture, families, and society look towards the LGBT community. It shall also explore how the everyday life is exploitative, oppressive and a controlled one

In the hermeneutic phenomenological tradition of Heidegger (1927/1996) and Gadamer (1960/1988), following the concept of lifeworlds of Wilhem Dilthey “the world of lived experience” (Menan, 1990: 54) and the lived experience refer to the immediate prereflexive consciousness of life, accessible to reflection, awareness, yet often times ignored. The daily lives that one experiences - a subjective world and the basic things of ones lifeworld (such as experiences of lived time, lived space, lived body, lived relations) are preverbal and therefore hard to describe. The lived experience has a temporal structure and therefore hard to be grasped in its immediate manifestation but only reflexively as past experience (Cline, 2008: 101). Heidegger further expanded the meaning of the word world by coining the use of the word worlds as an intransitive verb as explained in the following passage,

*“The world is not the mere collection of countable and uncountable, familiar and unfamiliar things that are just there... the world worlds, and is more fully in beings than the tangible and perceptible realm in which we believe ourselves to be at home. World is never an object that stands before us and can be seen. World is the ever non-objective to which we are the subject as long as the paths to birth and death, blessing and curse keep us transported into Being”* (Heidegger, 1927/1996: 43).

Hence, the world refers to one’s own subjective experience, constituted by one’s own feelings, desires, behaviours, imaginations and influences by customs and traditions of one’s own cultural upbringing and personal history. This study tries to find out how the queer individuals reside or inhabit within the temporal and spatial boundaries of heteronormative society and in that way how their worlds are restricted. It envisages knowing how such experiences of restriction and subjugation shapes the fabric of ones feelings and emotions and ones very identity as human individual. This study tries to understand the lived experiences of sexual minorities.

The sexual minorities dwelling in Nepal is none the exception from the chains of discrimination, stigmatization and continuous subjugation of the heteronormative

social structure which regards its unquestionable position high up in the social ladder. There are the societal, family and other economic pressures which make them totally bounded by compulsion leaving no room for their desires and wishes. The point that is tried to be drawn here is that, Nepalese society is more or less a closed society and thus the hurdles which come in the way of sexual minorities is also from the family and society in spite of having laws and legal support. Hence the problem of “coming out” is acute here. One of the participants in the field study quoted “... *I’ve heard people saying that being gay is a choice. In this respect the only thing that I would want to say is being gay isn’t a choice, coming out is*” (personal communication with, a homosexual college student on September, 2017 at Dharan). This statement not only negates the dominant claims of heterosexuality as the only natural way of organizing sexuality, but it also brings to light the societal, family and sometimes even professional constraints, which makes it very difficult for the sexual minorities to come out in the open to assert their sexual orientation or live a life of their choice. In fact, during my field visit in Dharan, all the interviewees restricted me to use their original names in my work<sup>2</sup>.

Though all the participants enriched the study with their valuable insights and views about the issue, yet disclosure of the names was not something that they agreed upon. This restriction points out some interesting issues about the community. One is that of the fear psychosis of being rejected by the society which would undoubtedly affect different aspects of their everyday lives. Further, it also explains how the clutches of heteronormative social structure is so strong. It binds them to participate in the everyday life. It restricts them to pursue their divergent sexual life against the hegemonic one. It shows how power works in dictating everyday life extended from the public to private domain. Further, it also points to the fact, how alternative life styles and life choices goes on underneath the dominant social structure. The fear, the compulsion and the unflinching support of those in power dictate the lives of sexual minorities in a way how they think it to be right and moral in nature; which forces the sexual minorities to carry on their activities hidden from the judgmental eyes of the society.

Thus, the lifeworlds of the sexual minorities are influenced by all these restrictions and commands from the mainstream heterosexual society which makes their worlds full of constraints and thus hidden; they are afraid to “come out”. Their lived experience in

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<sup>2</sup> The names of participants used in this research are not the original names but the names of their virtual identities in the internet that they have started to use for themselves.



that sense is influenced by the customs, laws and non-conformations made by the society which curbs their worlds and also their potentials as human individuals.

#### **4.2 Discrimination and Stigmatization: The Everyday Experience**

As Henri Lefebvre<sup>3</sup>, the French Marxist Scholar (1991) highlights, the everyday life<sup>4</sup> is full of discrimination, oppression and subjugation. It is controlled by those in power to fit their own needs. It is same in case of every individual in the society, minority or not. This thought became specifically clear when one of the participants in this study clearly challenged the established notion of heterosexuality by questioning the very question that was asked. When asked, “When did you realize that you were gay?” he replied, “When did you realize that you were straight?” (Personal communication with Prayas, on September, 2017 at Dharan). This encounter clearly portrays how, unintentionally, we have accepted the supremacy of a sexual structure as the ultimate truth without even realizing its subjective nature. The fact that this question was asked, itself, makes it appear that being gay or choosing a different sexual orientation is not something that happens in a daily basis and thus it is deviant from the ultimate truth of heterosexuality that the society defend. The question itself makes the sexual minorities excluded from the society because being straight is universalized and uphold as the only truth. Anyone who deviates from that given categorization, is brought to notice and is questioned about his/her choices. It is a very simple incident which not only exposes how everyday life is imposed with restrictions and controls that even skips our attention, but also, makes us realize how power works in the modern world.

Michel Foucault, the French postmodernist, has been hugely influential in shaping understandings of power, leading away from the analysis of actors who use power as an instrument of coercion, and even away from the discreet structures in which those actors operate, toward the idea that ‘power is everywhere’, diffused and embodied in discourse, knowledge and ‘regimes of truth’ (Foucault 1991; Rabinow 1991). Foucault challenges the idea that power is wielded by people or groups by way of ‘episodic’ or ‘sovereign’ acts of domination or coercion, seeing it instead as dispersed and pervasive.

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<sup>3</sup> Henri Lefebvre (16 June 1901 – 29 June 1991) was a French Marxist philosopher and sociologist, best known for pioneering the critique of everyday life.

<sup>4</sup> One of Lefebvre's most important contributions to social thought is the idea of the "critique of everyday life," which he pioneered in the 1930s. Lefebvre defined everyday life dialectically as the intersection of "illusion and truth, power and helplessness; the intersection of the sector man controls and the sector he does not control"

‘Power is everywhere’ and ‘comes from everywhere’ so in this sense is neither an agency nor a structure (Foucault 1998: 63). Instead it is a kind of ‘metapower’ or ‘regime of truth’ that pervades society, and which is in constant flux and negotiation<sup>5</sup>. Foucault uses the term ‘power/knowledge’ to signify that power is constituted through accepted forms of knowledge, scientific understanding and ‘truth’. Each society has its regime of truth, its “general politics” of truth. It has its discourse which are accepted and given the status of truth. The mechanisms and instances which enable one to distinguish true and false statements. It also has given a status to those who are charged with saying what counts as true” (Foucault, quoted in Rabinow 1991).

These ‘general politics’ and ‘regimes of truth’ are the result of scientific discourse and institutions, and are reinforced (and redefined) constantly through the education system, the media, and the flux of political and economic ideologies. In this sense, the ‘battle for truth’ is not for some absolute truth that can be discovered and accepted, but is a battle about ‘the rules according to which the true and false are separated and specific effects of power are attached to the true’... a battle about ‘the status of truth and the economic and political role it plays’ (ibid).

Therefore the accuracy that heterosexuality is the only natural form of organizing sexuality is given value and uplifted to the status of ultimate truth by those in power and those who are charged with saying what is the truth and then it is given a naturalizing effect by the institutions of the society. The fight is not for the preservation of a particular structure in the society but it is for the rules that which decide the truth and false of a particular structure (in this case, heterosexual structure) and power is an eventual factor in deciding about the same. It is here in that one can also bring in Foucault’s *Discipline and Punish*. The ones who are in power decide what is wrong and right and thus they punish the ones who falls outside their made rules and customs.

Extending this argument further, we can say that naming and categorizing things is given utmost importance. The differentiation of normal from abnormal, social from political, personal from public, homosexual from heterosexual, etc. is regarded supreme. It is this differentiation which gives the authority and power to practice exclusion and discrimination in the society and brand any practice as anti-social or

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<sup>5</sup> <http://www.powercube.net/other-forms-of-power/foucault-power-is-everywhere/> accessed on 14th November, 2015.

social in nature. And more than the categories, it is the rules that decide such categorization which wields the position of power in the society. As Palazzani put that every differentiations creates discrimination. In this sense, the ‘differences’ cancel out ‘the’ difference understood as a discriminatory category. The multiplication of differences is intended to divert attention from the centrality of the difference, which is considered the cause of inequality (Palazzani, 2013: 4).

By giving much stress over creating categories such as lesbian, gay, bisexual, Transgender, etc., we tend to deviate from the main idea of inequality and subjugation of the sexual minorities. Moreover, such categorizations also impose a kind of rigidity in their sexual identities. But in terms of identities based on sexuality, fluidity is vividly present. Because of many factors, sexual orientation of an individual may change with time. It is not necessary that a person who describes himself/herself as a gay or lesbian would continue to be so throughout their lives. A gay might change into a bisexual or even a straight individual might also chose a different sexual orientation. Discovering the self is a continuous process and thus things may change with time. Thus rigid sexual differences can only create more room for deviation from inequality and discrimination. Spaces for changes must be present.

Thus difference is always viewed negative the other is always seen as marginal. Thus, there is a need to deconstruct any difference and dichotomy, with the aim to destabilize the central notion of universal norm and problematize the terms and notions based on identity, recognizing and enhancing the plural, fluid and hybrid character of identity (Palazzani, 2013: 5-6). No identity in that matter can be said to be universal and unchanging in nature. It is in continuous flux. And thus, post modernism becomes an important lens in viewing the issues related to transgender issues as it goes against the modernist notions of fixed boundaries and universal notions.

For Stryker transgender phenomenon are post modern in that they are “imagined to point beyond contemporary modernity” (Stryker, 2006: 8), transgender theory is inextricably post modern in that it “takes its aims at the modernist epistemology that treats gender merely as social, linguistic, or subjective representation of an objectively knowable material sex. Transgender phenomenon, in short, point the way to a different understanding of how bodies mean, how representation works and what counts as legitimate knowledge” (ibid: 8-9). Materiality is central, however, to such

epistemological questions: “These philosophical issues have material consequences for the quality of transgender lives” (ibid: 9). As Whittle remarks,

*“It is all very well having no theoretical place within the current gendered world, but that is not the daily lived experience. Real life affords trans people constant stigma and oppression based on the apparently unreal concept of gender. This is one of the most significant issues that trans people have brought to feminism and queer theory”* (Whittle, 2006: 7).

Stigma and prejudices often lead to discrimination, social and economic marginalization, harassment and abuse. As Stryker and Whittle holds that though gender and sexuality are more or less philosophical as concepts, yet they have material results and stigmatization is one of the most significant material result of the same. The lived experiences of sexual minorities are available across many case studies, compilations, surveys, reports (Pant, 2013) etc. where stigmatization is evident in their subjugation by the mainstream society

Nepal was chosen for being a country that, over the last decade or more, has made significant legal advances in respect of rights for sexual and gender minorities. Specifically, in December 2007 the Supreme Court of Nepal issued a verdict in the case of Pant versus Nepal

*Declaring full, fundamental human rights for all ‘sexual and gender minorities’ – lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons... In addition to ordering the government to scrap all discriminatory laws, the court legally established a third gender category in addition to male and female – calling it ‘other’* (Bochenek and Knight 2012: 11).

Against this background, however, social attitudes toward people of transgender and same-sex sexuality remain complex and conflicted in Nepal, and the social reality is that many sexual and gender minority people may remain far more marginalised than current legislation might suggest. Any understanding of Nepal as a progressive legal example of same-sex sexuality and transgender activism must also consider the social realities, prevailing prejudices and the persistence of harassment and violence toward sexual and gender minority persons. Indeed, even though Nepal is not a country that has been characterised as having high levels of homophobic violence or action, social pressure to conform to heteronormative social conventions, and discrimination towards those who fail to conform, still predominantly shape the lives of Nepal’s sexual and gender minorities.

### 4.3 Gender and the Problem of Patriarchy

The LGBT rights movement in Nepal have inarguably advanced public debates. There has been an increasing understanding and acceptance of non-heterosexual and gender non-conforming people. However at the same time, there remains a powerful system of patriarchy which pervades the society and tinges many interactions from high politics to daily life. A strong residue of state endorsed patriarchy remains, despite a well-funded and highly-lauded women's rights movement achieving success.

As one political scientist argued, the male-dominated political elite superficially advanced women's rights without meaningful commitments, in effect "sanitizing" the pervasive patriarchy (The Kathmandu, 2013). In an op-ed, Pant described patriarchy as a cruel binary of pride and shame, a tacit phenomenon "hidden in the survivors of rape who don't report it while the perpetrators walk free, proudly"<sup>6</sup>. He argued that sexual and gender minorities, in interrupting and challenging this binary, were often socially degraded to the lowest common denominator, a phenomenon he had documented in several cases, including the trafficking and abuse of an effeminate gay boy in 2005<sup>7</sup>.

A 2011 CEDAW shadow report prepared by a group of Nepali women's rights organizations underscored the problem: "Nepali society has enforced behavioural norms for women, which emphasize suppressing sexuality and prescribing codes for keeping their bodies 'pure'. This limits women's control over their sexuality. Different standard[s] are used to determine sexuality of men and women."<sup>8</sup> One sociological study claimed that some families have strong gender-based expectations for their children and sexual and gender minority children upset and challenge these so deeply they can trigger extra mistreatment<sup>9</sup>. A 2011 anonymous op-ed construed the struggles LGBTI people face in spite of legal progress as symptomatic of "a society struggling to come to terms with open heterosexuality" and indicative of the "juxtaposition between our liberal legislature and conservative society." (Knight, 2015: 16)

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<sup>6</sup><http://us.ekantipur.com/2012/04/03/related-article/no-matter-the-sex/351694.html>

<sup>7</sup> Pukaar, "Trafficking of boys," July 2005, <http://www.nfi.net/NFI%20Publications/Pukaar/2005/July2005.pdf>

<sup>8</sup> Shadow Report on the Fourth and Fifth Period Report of the Government of Nepal on CEDAW, 2011, [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FWLD\\_NepalCEDAW49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FWLD_NepalCEDAW49.pdf) See also: Rabin Pathak, "Gender Identity: Challenges to Accessing Social and Health Care Services for Lesbians in Nepal," *Global Journal of Health Science* Vol. 2, No. 2, October 2010.

<sup>9</sup> [http://www.socialinclusion.org.np/new/files/Dhana%20Bd%20Sunar\\_1365491792dWdW.pdf](http://www.socialinclusion.org.np/new/files/Dhana%20Bd%20Sunar_1365491792dWdW.pdf)

Such constraints and expectations can pose serious challenges for LGBTI people grappling with the public and private understandings of their lives, identities, and expressions. The difficulties can be particularly pronounced for lesbian women. Explained one veteran staff member at a donor agency that supports LGBTI rights organizations: *For women in Nepali culture it is more difficult than men because we are already at a positional disadvantage. That means more than just “social prejudice” or the soft things, it means our daily lives are impacted by our gender—the things we are expected to do, the ways we are expected to behave and react and support our husbands* (ibid). As a result of these social and structural constraints, lesbians often found themselves in a position one report, which included research on sexual violence against lesbians, called “a three layered oppression: for being women, for being a minority, and for being subordinates”<sup>10</sup>.

Because the lives of LGBTI women in Nepal are defined by two identities- that of being a woman and that of being a part of the LGBTI community, it is impossible to discuss women’s experiences of homosexuality without first understanding the effect the patriarchal society has on women. Nepali society systematically controls all areas of women’s lives, from hindering women’s abilities to work, enforcing societal expectations of marriage, and the policing of women’s sexuality. Social expectations of traditional society create a reality in which “social roles for women emphasize their obligations but fail to establish or uphold their rights, or establish gender equality or reciprocity”, creating a cycle of inequality that is difficult to escape<sup>11</sup>.

Patriarchy in Nepal demands that women’s sexual behaviour be tightly controlled, revolving around the idea that a woman’s sexuality is inferior to that of a man’s. The key distinction made by Liechty explains that “cultural values hold that sexual freedom, desire, and pleasure are necessary and natural for men and unnatural for women” (Outtara, 1998). This distinction between men and women’s sexuality is what distinguishes women’s sexuality as a matter of character and moral essence. Because women’s sexuality is a personal attribute, women must follow behavioural expectations in order to protect their purity and their honour. These include dressing and acting in a modest fashion, deferring to men and to their families’ authority, following cultural

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<sup>10</sup> WOREC-Nepal and ISIS-Wicce, “Unveiling Justice: Rape survivors speak out—a Research Report on access to Justice for Rape survivors in Nepal 2007-2010,” 2011, <http://www.isis.or.ug/wp-content/uploads/downloads/2012/02/Nepal-report-final-web1.pdf>

<sup>11</sup> Forum for Women, Law, and Development, Study Report Publication No. 138. (August 2007) 21, 21

codes of restricted mobility, and getting married at an appropriate age to a spouse chosen by the woman's family. Women who break any of these norms face social isolation and other more dire consequences (Greene, 2015).

The role of lesbian and bisexual women in LGBTI and women's movements has been tenuous, often characterized by invisibility. Initial HIV/AIDS funding streams that supported LGBTI communities even in part, focused almost exclusively on MSM and transgender populations. Despite attempts at inclusion, the health emphasis, paired with the lack of a more encompassing framework for sexual rights in international norms, strengthened primarily gay male and transgender women's leadership in central roles (Knight, 2015: 17).

Similarly, as women's organizations fought for legal and social gains, such as the 2002 Supreme Court ruling that established marital rape as a crime, their engagement with sexuality and gender identity was inconsistent. Some leading women's rights organizations have openly supported LGBTI rights actions at key junctures, including the Forum on Women, Law and Development, which helped BDS file a case against the Nepal Army when two lesbians were expelled<sup>12</sup>.

In 2005, BDS supported a lesbian couple, Laxmi Ghalan and Meera Bajracharya, escaping threats of rape and death from their families. The two would go on to establish Mitini Nepal, initially an offshoot of BDS, to provide services to lesbian, bisexual, and transgender individuals who identify as women (UNDP, USAID, 2014: 46). The group became Nepal's first women's rights LBT organization<sup>13</sup>.

The combined forces of gender- and sexuality-based discrimination take different forms for LGBTI people. Patriarchy, donor priorities, and NGOs' political engagement strategies continue to shape the landscape for LGBTI rights. Even within the context of major legal and social gains in Nepal, these differences deeply affect the daily lives—and inform the responses needed—for inclusion and protection (Knight, 2015: 18).

#### **4.4 Discrimination faced by the LGBTQ Community**

The deeply rooted patriarchal and traditional society not only makes women's lives difficult, but it also results in incredible challenges for sexual and gender minorities in

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<sup>12</sup> UK Gay News, "Still No Hearing Date for Sacked Soldiers Accused of Being Lesbians," November 17, 2007, <http://www.ukgaynews.org.uk/Archive/07/Nov/1602.htm>

<sup>13</sup> Mitini Nepal: <http://www.mitininepal.org.np/>

Nepal. Individuals in these groups experience hardship from all sides, from harsh social repercussions to the serious risk of violence in retaliation against their rejection of social norms. In order to fully grasp the framework for this mistreatment, “it is necessary to understand Nepal’s social context wherein sexual and gender minorities are often perceived as a social *vikriti*- a state of deterioration that can connote disease, degeneracy, deformation and malformation”, a perception which pervades (Greene, 2015).

Nepali society and creates a powerful stigma against those who identify as sexual and gender minorities (Boyce and Coyle, 2013). Members of the LGBTI community in Nepal have been marginalized and discriminated against on the basis of their sexual orientation and gender identity for most of the country’s history. Much of the stigma against this community is rooted in a lack of understanding which stems from traditional ideas about gender roles and sexuality. In Nepali society, there tend to be “very strong views on biological sex as natural and other identity categories or expressions as unnatural”, an orthodox judgement which causes a “strong tendency to reject non normative (or non-binary) gender roles”, manifesting itself in intense discrimination against these minorities (Sharma, 2012). This occurs in many forms, ranging from manageable (albeit very unpleasant) social exclusion to extreme human rights violations.

Often, discrimination begins at a young age. Many LGBTI children are unable to complete their studies, due to “threats, bullying and neglect from fellow students and teacher alike”, and some even engage in self harm as a response to “frustration, anger, and helplessness due to stigma, scolding, teasing and other social pressures” (Bahadur, 2012). As expressed by a participant in the interview (Personnel communication with Raaj, a gay man at Dharan on September 2017), *when I used to go to toilet, my friends used to bully me saying why don’t you go to girls toilet? They called me by names such as mental, homo, etc in front of everyone. All I felt that time was, wish I met an accident and died.*

These same individuals are frequently only beginning a lifetime of adversity as their attempts at employment are met with prejudice that begins directly at the job recruitment process. Employment discrimination against those with diverse sexual orientation and gender identity is rampant, and many lose their jobs once they expose



their true identities (Greene, 2015). Some are indirectly forced into sex work because they find themselves unable to attain any other jobs, moreover this is perhaps the only profession in which they are able to be open about their sexuality or gender identity. Boyce explains that “when sexual and gender minority people are presented with a choice between pursuing emotional or psychological fulfilment to the detriment of their economic wellbeing, they engage in a difficult balancing act, where either option exposes them to a range of problems” (ibid).

Members of this minority are often forced to choose between being open about who they are and being accepted in society, a predicament in which either option connotes heavy sacrifice. However, discrimination can take a much more severe form, due to the fact that “since even many educated Nepali’s believe that homosexuality is a psychological condition and a curable disease, lesbians are sometimes subjected to “corrective rape””; additionally, “men who feel threatened by woman identifying as males are often rape perpetrators, punishing these women who dare to break out of oppressive gender binaries” (Desouza, 2014). Members of sexual minorities are disproportionately at risk of violence and forms of ill treatment simply because they fail to conform to socially constructed gender expectations.

Shockingly, violence often comes from police forces, as many sexual and gender minorities report verbal abuse, indiscriminate body searches, and severe beatings at the hands of police, as well as harassment and arbitrary detainment on grounds of their sexual orientation and gender identity<sup>14</sup>. In a court appeal for greater protection of the LGBTI community, a document asserted that “neither the existence of national laws, nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killing that gay, lesbian, bisexual and transgender persons are subjected to because of who they are or are perceived to be”<sup>15</sup>.

In a conversation with a gay man with whom I spoke remarks on the experience of being homosexual in Nepal (Prayas at Dharan on September, 2017). He chronicles his daily struggles of harassment, consisting of discriminatory comments from family, neighbours, friends and strangers asking him “*Why don’t you marry?*” and cruelly

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<sup>14</sup> Blue Diamond Society and Heartland Alliance. The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal. Heartland Alliance Global Initiative for Sexuality and Human Rights. (June 2013) 9, 60

<sup>15</sup> Decision of the Supreme Court on the Rights of Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) People. NJA Law Journal. (2007) 20

teasing “*You are sexless? Do you have a reproductive organ or not? You are so like a eunuch!*” He tells of how his friends ostracized him once he revealed his sexuality, telling him “*We can’t have you as a friend because then our children will know that you are gay*”, and of his inability to get a job due to his unmistakably gay presentation. After narrating the social isolation from friends, lack of acceptance from his community, and ongoing harassment, he encapsulates his experiences with the powerful statement “*We are nonexistent, so invisible. Our lives are so invisible. I am invisible; no one wants to know my struggle*”. All in all, members of the LGBTI community face a myriad of obstacles, from discrimination in the form of mistreatment by security forces, sexual assault, harassment, physical violence, physical and psychological threats to emotional trauma such as exclusion from their families and from society (Greene, 2015).

Daily prejudice faced by members of the LGBTI community leads to serious emotional and psychological repercussions. The confusion and pain of leading a split life or dual existence combined with experiences of harassment and discrimination merge together to create an immense burden (ibid). A study done on lesbians showed that “social exclusion and discrimination may bring many psychological disorders for lesbians”, documenting “anger, depression, sleeplessness, nightmares, flashbacks, sleeping disorders and uncontrollable crying” (Pathak, 2010). Indeed, rates of depression and suicide are significantly higher among lesbians and other members of the LGBTI community. One gay man recounts that he has now lost 10 of his gay friends to suicide, a tragic and unfathomable statistic (ibid). It is not only in Nepal, but all around the globe. A study in 2009 by the University of South Florida<sup>16</sup> have shown that one third of the first suicide attempts done by the lesbian, gay and bisexual individuals occurred within the same year of their self-identification of gay, lesbian or bisexual. This shows how a hatred and the idea of doing wrong is imparted deep within the psyche of individuals by the hegemonic social structures that it extends to even committing suicides on knowing about ones innate desires and attractions.

The social rejection and harassment is difficult to overcome for many, as a study on lesbian experience reported that about a third of lesbian women face violence when

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<sup>16</sup> Accessed from “Asset-Based Approaches for Lesbian, Gay, Bisexual, Transgender, Questioning, Intersex, and Two-Spirit (LGBTQI2-S): Youth and Families in Systems of Care” by Peter Gamache, MBA, MLA, MPH & Katherine J. Lazear, MA, University of South Florida, Summer 2009.

they disclose their sexual orientation, from family members, friends, and neighbours<sup>17</sup>. Thus most of the youth when realize their sexual orientation as a deviant from the “normal” way of organizing sexuality in the society, they engage in a process of self denial. They try to deny their sexual orientation and take it as nothing more than a ‘passing phase’ of life which will change with the change in time and circumstances. Thus they try to get into heterosexual sexual relationships and change their interest forcefully just to adjust themselves with the majority in the society and save themselves from societal rejection and humiliation. Such is the hold of heteronormativity over our lives, interest and even bodies. But until and unless self assertion of one’s identity takes place, the demands for an inclusive, tolerant and dynamic society is not very possible.

#### **4.5 Societal Expectations of Marriage and Family**

As previously illustrated, the powerful system of patriarchy that pervades Nepali society restricts women’s freedom and happiness to an overwhelming degree, while the traditional family structure and rigid gender norms are the greatest causes of stigma against members of the LGBTI community in Nepal. But where is the intersection between these two minorities? It is generally found in the social expectation of marriage which is imposed from patriarchal values onto members of the LGBTI community, causing immense conflict and distress, especially during adolescence. The considerable tension that arises from these individuals’ aversion of traditional marriage is a catalyst for the deterioration of family relationships, and often even causes LGBTI children to run away from home (Greene, 2015).

It is important to understand that “marriage is one of the strongest social constructs; almost all members of society see it as a destiny. The expectation of marriage is not only a matter of concern of the children, but also a source of worry to many families, particularly for those who already know that their children have a sexual orientation or gender identity that is non-heterosexual or non-binary” (Boyce and Coyle, 2015). Many LGBTI children cite the expectation of marriage as the single reason for running away from home, a consequence that is both sad and dangerous, as it puts these children at a high risk of exploitation and trafficking. It is incredibly unfortunate that these

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<sup>17</sup> CREA. Count Me In: Research Report. Violence Against Disabled, Lesbian, and Sex-working Women in Bangladesh, India, and Nepal. 102

individuals who are most in need of family support are unable to benefit from it, as they are distanced from their families because of their refusal to marry.

A study done on lesbians found that most stated that “they rarely go to their (parents’) home for fear of being forced to get married, which often results in a dispute among family members. They also revealed that when the parents discover their daughter to be a lesbian, they force her to get married to a man and live in a heterosexual relationship” (Desouza, 2014 ). Women who are forced into heterosexual marriages through intense familial pressure face a lifetime of suppressed identity and internal turmoil (Greene, 2015).

When asked about marriage (Personnel Communication with Raaj at Dharan, in September 2017), he spoke about ‘*conditional acceptance*’. This refers to the idea that a family can accept their child as gay if they will still consent to getting married and following a traditional lifestyle. In this respect, it is apparent that the majority of discrimination faced by sexual and gender minorities’ stems from their rejection of traditional gender roles, rather than simply homophobic ideas (although these are present to a certain degree) (ibid).

The most important institution of the society, which can also be said the vanguard of the heterosexuality, is the traditional family composed of father, mother and children. This institution is considered supreme and universal since time immemorial. Questioning the authority of a family system is synonymous to questioning the authority of god. Similarly, heterosexuality is accepted as the only mode of organizing sexuality to build up that family. Alternative family structures constituting of two same sex persons and any adopted child becomes out of question here. And thus, heteronormativity is rooted in the very beginning of life itself. The tradition of having a heterosexual family is so ingrained in us that we don’t even see the possibility of an alternative family structure. Here comes the problem when a child born within that traditional structure of family does not conform to the heteronormative model of life already assigned to them by their very birth. As a result of that there begins a search for acceptance, intimacy and comfort among their own kinds. Resultantly, the desire for intimacy and care further heightens.

Despite official recognition on paper and some political advances, it is family pressure and social expectations that force most LGBT people to stay firmly in the closet. There

is little discussion of why this happens and the harm it causes both to LGBT people and to the opposite sex partners they may marry. Coming out as an LGBT individual to family, friends and society is uncommon.

For Giddens (1992) an 'ideal of intimacy' is personified by the desire of a 'pure relationship' representing an increased level of emotional and sexual democracy, with stress on choice and trust. An important feature of pure relationship arises from a term which Giddens term as 'plastic sexuality' where sexuality attains distinct signification as it is liberated from reproduction. Although Giddens sees such shifts taking place in heterosexual relationships, he suggest that lesbians and gays have been the longest practitioners of 'pure relationship'. While Jamieson (1998) warns against overstating the extend of the pure relationship, stressing how structural inequalities exists, she too concedes that same sexual relationship provides for the greatest form of 'pure relationship' (Hines, 2007: 40).

Moreover, friendship is given utmost importance when discarded by the family. While some friends come in support and others chose to bully. Various studies have shown that for many lesbian and gay men, friends are granted levels of importance equal to family members (Altman, 1982; Nardi, 1002; Weeks, 1995). One of the significant themes to emerge from the study of same-sex partners of care is the importance of friendship networks. Nardi (1992) in her study have portrayed the magnitude given to friendship especially in the times of crisis like that of illness. Further, Weeks et al (2001) have shown the value given to friendships as the givers of care and much needed attention. Identifying the reasons behind the increased importance of friendship in hetero/ homosexual divide, Roseneil (2000) have also analysed and found out that friendship is central to the lives of people undergoing gender transition (Hines, 2007: 41). Even in the field study, the support of friends came out to be a determining factor in dealing with the constraints of heteronormative society. Thus remarks one of the participants, "*coming out to my close friends was much more easier. They understood me well and did not differentiate or judge me for what I was. They took it pretty casually*" (Personnel communication with Neal on September, 2017 at Dharan)

However, when it comes to families especially in a conservative society like Nepal, they do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Same goes with girl child. Both

gender are supposed to behave in the manner which society has constructed and permeated the ideas for each. Parents may provide several reasons for doing so: bringing disgrace and shame to the family; diminished chances of their child getting married to a woman in the future and thus end of their generation (if they have only one male child); and perceived inability on the part of their child to take care of the family. Since society is close-knit and family and kinships are prominent, image and “saving face” play a significant role in an individual’s life.

Many parents of LGBT children fear that a child being gay or transgender will make them lose face and become an object of derision. Instead of the individual, people are more accountable and obliged to society and community. A family’s prestige and social position almost always trumps individual freedom and choice. Making sacrifices for the sake of family is seen as honourable and desirable. Families attribute sadness, worries, and depression to having a lesbian, gay or transgender child. Some families are angry or neglect their LGBT member. They worry about losing honour and fear the discontinuity of the family line and shame in the presence of other community members (Onta, 2012).

While urbanization is bringing some change, the general expectations of gender roles, i.e. that a man is the breadwinner and a woman is the caretaker of the house, prevails strongly in the villages and in rural areas where the bulk of the population lives. This can make it especially hard for lesbian couples to set out on their own and earn an independent living, as working women face many more daunting challenges in Nepali society than men. The gender norms are endorsed supreme here and anyone deviating from what is prescribed beforehand is said to be a disgrace. As expressed by a participant in the field study, “ *I did face humiliation and stares and comments from strangers but what was killing me more is my parents calling me names. Every time my father would scold me or tell me to not behave like eunuchs.*” (Personnel communication with Neal on September, 2017 at Dharan)

Judith Butler, in her monumental work *Gender Trouble* (1990) develops the concept of gender performativity to address the ways in which the rules of gender are compulsively and repetitively acted out to reinforce naturality. She points out the fact that gender does not have any expression of its own, only when performance is carried out, it gives meaning to that identity. Until and unless performed, gender does not have any

expression and thus says that only through the alternative cultures of cross dressing, drag etc. can challenge the naturalizing tendency of gender and sexuality which is thought to be given and unchanging in nature (Butler, 1990:25).

When perceptions are fabricated on one's mind, on one's environment, indicating what is to be done by boys what cannot be done by boys, what is to be done by girl and not done it directly or indirectly challenges one's personal choices that can be seen as 'acceptable' and that which is not. And all this has gender roles has been socially constructed. Any deviance from it calls for disgrace and embarrassment. One cannot just do things just because they want to, cause that would bring the attention of the people that surrounds you which might initiate some sort of a debate, or worse, can make one a victim of constant mocker.

Such nostalgia from the childhood illustrates two important things. First, is the very way it signifies how gender norms are taught and learnt from a very early stage of life. Clothes act as an important means to regulate gender norms. As Hines (2007) understands, clothes also appear as a signifier of gender rebellion. Dressing in female clothes by a boy can be seen as a gender resistance through which assumptions around the intrinsic relationship between biological sex and gender appearance are challenged. Such a challenge however is not easy and, in articulating the secrecy of cross-dressing, participants show that they were aware of the cultural imperative to perform gender appropriately (Hines, 2007: 52). The lived experiences cited above signifies awareness at a very early stage of life about the gender norms and how the deviation from those norms are socially unacceptable.

The second is the fear of being different from the mainstream society and thus being rejected by the general masses is clearly expressed in the above statement. The clutches of everyday life has such a strong hold over us that to deviate from the majority requires a lot of guts and mental preparation to face the world; and thus everyone does not have that strength to "come out" and lead a different life from the majority. Such wants to be a part of the mass and society often lead an individual to live "double lives".

In this regard, one of the participants in my study also introduced me to the term "*using a beard or a camouflage marriage*" which is generally used to describe such sexual arrangements. "*Using a beard or camouflage marriage*" would then mean, using a heterosexual relationship as a covering to hide the so called "unnatural" sexual

relationship with another partner (personal communication with Rohit on October, 2017 at Kathmandu). Such terms differs from one place to other, like in US, they use the term “on the down low” or just DL. Such sexual arrangements are also portrayed in books of E. Lynn Harris, like his trilogy, *The Invisible Life* (1994), *Just As I Am* (1995) and *Abide With Me* (1999). These books traces the growth of a character ‘Raymond Tyler’ and his journey from living a heterosexual while being on the DL to coming out as gay and living openly with his male partner. On similar lines is written the novel *The Married Man* (2000) by Edmund White which depicts the story of an American man who falls in love with a Frenchman married to a woman. In India, the documentary film, *Terhi Lakeer* (2002) also depicts similar sexual arrangements. In the documentary, two elderly middle class men are in a long term relationship with each other, one of them marries a woman and persuades the other to marry too so that they can have children who could look after them when they are old and grey. But their relationship continues underneath the societal veils that they create to hide their arrangement (Vanita, 2005: 220-221).

Though wearisome, the issue of coming out in the open to assert one’s own sexual orientation is nonetheless important in the assertion of one’s own self and his/her *lifeworld*. In this regard the views of Engels-Schwarzpaul and Michael A. Peters (2013), is very interesting; specified in their work *Of Other Thoughts: Non-Traditional Ways to the Doctorate: A Guidebook for Candidates and Supervisors*. For them, ‘disclosure is a response to the constant assumptions prevalent in an environment shaped by heteronormative norms: to attain significant levels of integrity, one must eventually disabuse people and in this process one discloses. Although often hazardous, disclosure is significant to ones own self worth. Disclosure is not single coming out. It is a lifetime process that is re-evaluated with each new encounters’ (Schwarzpaul and Peters, 2013: 135).

Nepali society often does not distinguish among the diverse sub-groups within LGBT community – lesbian, gay, bisexual and transgender people – with the most common misconception being that all LGBT people are transgender women who cross dress and engage in sex work. “It is because most gays and lesbians are not out, and they cannot be differentiated by appearance from heterosexuals, while third gender people and cross dressers are distinct and visible that people often have misconceptions understanding LGBT identity,” explained Pinky Gurung, a long-time and well-known transgender



activist and president of the board of BDS. In a study, “Self-perception of Stigma and Discrimination among Men Having Sex with Men,” the majority of the respondents who identified themselves as men did not have problems with their families because they did not disclose their sexual orientation due to the fear of discrimination. Compared to gay men, those with indigenous transgender identities such as metis experience more discrimination in their families due to their visible feminine appearance (UNDP, USAID, 2014: 24).

An important social and family issue for LGBT individuals in Nepal is access to housing and inheritance rights. Securing a place to live is one of the biggest obstacles faced by some LGBT people, especially transgender women or feminine gay men. These subgroups are often likely to be kicked out of their homes and communities by families and relatives. Other landlords will most often not lease out places to them because of ignorance and the fear that they might engage in sex work in their neighbourhoods. Same-sex couples living together will likely face discrimination as it is next to impossible for them to live together without facing raised eyebrows, intrusive questioning, and discrimination of some kind (as explained by most of the participants in the field study done at Dharan on September, 2017).

#### **4.6 Employment Status of the LGBTQ Community**

Employment needs and conditions of LGBT people are not well documented and under researched. LGBT individuals in Nepal face challenges in employment as individuals and as members of a community subject to discrimination and abuse, compounded by their often-inferior social status and position. Discrimination is common in the workplace based on perceived LGBT identity and HIV status and occurs during recruitment and employment. Sexual harassment of LGBT employees was widely reported by most of the LGBT individuals with whom I had conversation, although little has been documented through police reports or other formal testimonies. Victims are reluctant to speak out in public and often hide their stories due to fear of being denied new jobs and the fear of being stigmatized.

Most discrimination happens due to the personal prejudice of employers, lack of awareness of sexual diversity and weak laws.

In the broadest sense, homophobia and transphobia in society and the education system will be replicated in the workplace; the damage of homophobia and transphobia may

affect LGBT employees in terms of their self-esteem and mental health, which will affect their quality of work. Many LGBT people and especially transgender women have difficulty finding jobs that meet their expectations and competencies. Gay men and lesbians on the other hand, if their sexual orientation cannot be recognized by their outward appearance, are “safe” as long as they remain in the closet. This can cause various mental health issues from the pressures of hiding their sexuality. Employers may increase their workload due to the belief that they have no family obligations to fulfil. The credibility and credentials are often overlooked in the light of their transgender identity and appearance. Transgender women are assumed to be sex workers because of their appearance and behaviour. Transgender people are often subject to discrimination and limited to low-level employment, including in the entertainment industry and sex work<sup>18</sup>.

Most traditional work settings in Nepal such as the government service, educational institutions, health care services and the private sector are not welcome or tolerant of openly LGBT people. Certain sectors such as design, fashion, the arts, performance and entertainment are generally more welcoming. Several prominent beauty queens and celebrities came out in support of LGBT rights in a video produced for B-Change Foundation and ‘Being LGBT in Asia’ by a lesbian activist and film director in Kathmandu who was involved in the production of the lesbian romance movie *Soongava*, Nepal’s official selection for the Oscars in 2013<sup>19</sup>.

Civil society organizations have reported to some extent being involved in setting up vocational training centres and developing life skills training programs for different marginalized groups. But little has been done to seek mainstream employment for LGBT persons, especially transgender people, who are more visible and hence particularly vulnerable to exploitation and discrimination (UNDP, USAID, 2014: 39).

#### **4.7 Health Status of the LGBTQ**

The HIV epidemic focused attention on the health needs of LGBT individuals in Nepal. It dramatically increased donor funding and led to the inclusion of LGBT issues in government policies for the first time. Gay men, transgender women and MSM account

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<sup>18</sup> Discussion with participants in field study

<sup>19</sup> Nilu Doma Sherpa, *Stories of Being Me*, available at <http://www.being-me.net/stories-of-being-me/film-makers/nilu-doma-sherpa/>

for 21.6 percent of all HIV cases in Nepal. This puts them at over 12 times higher risk of HIV infection than the general population. The epidemic has spurred widespread activism for the rights and well-being of the LGBT population, especially by transgender women and gay men. Many community-based organizations working on HIV and human rights have been established.

The HIV epidemic also provided an opportunity for the government to scale up funding and interventions for HIV prevention, treatment, and care and support that directly benefited LGBT organizations and affected subpopulations. An HIV bill was drafted with the aim of creating enabling environment for HIV programming and service delivery (Borromeo, 2011).

Non-HIV-related health issues of LGBT people are often overlooked. For instance, much remains unknown about the overall status of sexual and gender minorities on mental and psychological health issues. The specific needs of transgender men and lesbians including reproductive health are seldom discussed or explored.

The dominant heterosexual cultural norms in Nepal create a basis for stigma and attendant prejudice, discrimination, and violence, which underlie society's general lack of attention to the health challenges of LGBT people. For some individuals, this may be complicated by additional dimensions of inequality such as caste, ethnicity, and socioeconomic class, resulting in stigma at multiple but mutually reinforcing levels, which make them reluctant to access health services. At the same time, these subgroups – across class and caste lines – have many experiences in common, key among them being the oppressive experience of stigmatization.

Most LGBT people in Nepal have reported encountering stigma from an early age and this experience shapes how they perceive and interact with all aspects of society including health care institutions. Likewise, heterosexual individuals (including health care professionals) have been socialized in an environment where sexual and gender minorities are stigmatized. This inevitably affects attitudes and behaviours towards LGBT people. Institutions and systems that affect the health of LGBT people have developed in societies that traditionally stigmatize these groups. This has important

implications for the ability of healthcare providers and institutions to address the health needs of sexual and gender minorities<sup>20</sup>.

Fear of discrimination also prevents LGBT individuals from seeking medical treatment. Because of hostile or insensitive attitudes towards sexual minorities from untrained health care providers, “the fear of judgment and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services.” This effectively interferes with their right to health<sup>21</sup>.

Denying an individual equal access to health care or deterring them from seeking health care based on the person’s sexual orientation or gender identity constitutes discrimination and is a clear violation of both the ICCPR and the ICESCR to which Nepal is a signatory<sup>22</sup>. This denial interferes with their right to life and right to be free from discrimination under articles 6(1) and 2(1) of the ICCPR, respectively<sup>23</sup>. It also interferes with their right to health under article 12 of the ICESCR, which places a higher burden on states to provide accessible health facilities, goods, and services to individuals living with HIV<sup>24</sup>. The state has a responsibility to protect LGBT people and allow them access to health care without fear or barriers. This responsibility is currently unmet.

Another health issue relates to development programs and disaster relief and is an area in which USAID Nepal has taken the lead. Research suggests that development staff often overlook gender identity and sexuality in post-disaster relief missions and

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<sup>20</sup> Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011) “The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding”, The National Center for Biotechnology Information: <http://www.ncbi.nlm.nih.gov/pubmed/22013611>

<sup>21</sup> See United Nations General Assembly (A/HRC/14/20), Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council Fourteenth session Agenda item 3 (Apr. 2010). Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf><http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf> (Discusses the impact of laws criminalizing consensual same-sex conduct on sexual minorities’ right to the highest attainable standard of health)

<sup>22</sup> BDS and Heartland Alliance for Human Needs and Human Rights -Global Initiative for Sexuality and Human Rights (2013),

<sup>23</sup> ICCPR, supra note 7, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”); ICCPR, supra note 7, art. 2(1) (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”)

<sup>24</sup> U.N. Hum. Rts. Comm., supra note 33

contexts because they may cause unease for some people and because of a lack of protocols to deal with these issues across different cultural contexts (UNDP, USAID, 2014: 51). But this is to the detriment of LGBT people. As an example, in disaster relief after flooding in Sunsari district in eastern Nepal, transgender women were reportedly not being given food supplies because they did not fit into conventional definitions of families with children (Knight, 2012). The government has expressed a commitment to the health and rights of LGBT people. However, policies that would translate these commitments into practice are lacking<sup>25</sup>.

LGBT youth face the same challenges as their heterosexual peers during this stage but LGBT-related stigma and discrimination contribute to disparities in health status between sexual- and gender-minority youth and heterosexual youth. The HIV prevalence of 1.3 percent among young MSM (UNDP, 2012). A Save the Children report (Sharma, 2012) also suggests that young LGBT people often suffer from depression, anxiety disorders, substance abuse (smoking, drug use, alcohol consumption) and even suicide or suicidal ideation. Young transgender women and young LGBT people in general are at significant risk of homelessness.

Lack of proper and adequate information on LGBT identity can lead to an unhealthy and stressful adulthood for many LGBT people, especially among those who stay in the closet and are not open about their SOGI identity<sup>26</sup>. Adult LGBT people appear to experience more mood and anxiety disorders, more depression, and an elevated risk for suicidal ideation when they fail to achieve Nepali society's rigid heteronormative expectations.

Elderly LGBT experience stigma, discrimination and victimization across the course of their lives and into old age. LGBT elders experience unstable family situations and loneliness. Depression levels and suicide appear to be elevated among older lesbians and gay men. There is some evidence that LGBT elders exhibit lower crisis competence (a concept reflecting resilience and perceived hardiness) than heterosexual

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<sup>25</sup> At the opening session of the Nepal National LGBTI Community Dialogue in April 2014, the Minister for Health and Population gave an impassioned statement that the Constitution guarantees human rights for all and that the Ministry promises to accept the community's recommendations from the Dialogue for consideration and implementation. Such high level support indicates that the government is an ally with which community groups and development partners can work together to achieve their health and human rights goals.

<sup>26</sup> Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011)

counterparts<sup>27</sup>. HIV and STIs impact older LGBT individuals as much as younger individuals and this is often overlooked. Limited research available suggests that elderly transgender people experience negative health outcomes as a result of long-term hormone use. Disability among elderly LGBT people is a topic rarely considered and needs to be addressed.

Thus one can understand that how heteronormative structure of the society has a damaging impact on the health and mental well-being also of the LGBT individuals.

#### **4.8 Religion in Nepal**

Nepal is a diverse nation. It is multi-cultural, multi-ethnic and multi-lingual. It has all the religions present since the ancient times. According to constitution of Nepal, Nepal is a Secular state. The Nepal constitution guarantees equal treatment of all the religions by the state and equal freedom of each religion. Nepal was officially a Hindu kingdom, prior to the movement for democracy in early 2006 and sacking of King Gyanendra in 2008. Hinduism is the major religion in the state. It very much influences its social structure, while Buddhism(Tibetan Buddhism) is practiced by some ethnic groups (for example Newar) in forms which are strongly influenced by Hinduism; Kiratism otherwise is the grassroots native religion of populations belonging to the Kirati ethnicity. Islam, Christianity, Sikhism and Jainism have made inroads and are the religious identity of small populations.

In Nepal, religion is not just a set of beliefs and accompanying rituals handed down from generation to generation; rather it is a complex intermingling of traditions, festivals, faiths and doctrines that have permeated every strata of Nepalese Society in such a way as to become the very heartbeat of the nation<sup>28</sup>. This part would discuss about the stance of Hinduism, Buddhism and Christianity in Nepal on homosexuality.

Discrimination from religious groups is minimal due to a Hindu and Buddhist majority that are seen as not overtly homophobic. The Hindu epics record diverse sexual orientations and gender identities. References to sexual orientation or same sex behaviour are barely discussed in the Pali Canon, the scriptural texts that hold the Buddha's original teachings (UNDP, USAID, 2014: 10). So, it is perceived that religion

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<sup>27</sup> Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011)

<sup>28</sup> <http://www.thamel.com/htms/religions.htm>

does not contribute strongly to discrimination and harassment of LGBT individuals, except where it influences social mores and traditions

Nepal is a majority Hindu nation. Even though different sexual orientations are mentioned in the ancient epics, present day Hinduism and its practices do not have a clear view on LGBT issues. In Nepal, religion is sacred and Hindu gods and goddess are depicted erotically on temple walls. The phallic symbol of Shiva is worshiped by Hindu men and women with equal devotion. And depictions of *kama* or sexual union are painted and carved in ways that a Nepalese wouldn't normally see or speak about in the presence of a family member (Khadka, 2017).

As Sunil Babu Pant quotes,

*“In Nepal, most Hindu leaders know that “Hindu deities are so diverse and have been gays, lesbians and transgender themselves.”... Many Hindus believe that a marriage lasts for seven lives and although there is no guarantee whether a spouse will be born male or female in the next birth, the relationship continues. There are many transgender gods especially in tantric Hinduism”* (Stewart, 2012)

In visit to Blue Diamond Society on October, 2017 at Kathmandu gained lots of valuable information about religion and homosexuality. At the very entrance of the building was the statue of *Ardhanarishvara* or the Dual Nature of the Cosmos. Mr. Parsu Ram Rai, Program Director of BDS, Proposal Writer, Human Right Activist and Mr. Bishwo Raj Adhikari, Mr Gay Handsome Nepal, 2013 and Gay Right Activist explained in details about how *Ardhanarishvara* is the basis for homosexuality in Nepal.

The name *Ardhanarishvara* means “ the Lord Who is half woman”. *Ardhanarishvara* is also known by other names like *Ardhanaranari* (“the half man-woman”), *Ardhanarisha* (“the Lord who is half woman”), *Ardhanarimateshvara* (“the Lord of Dance who is half woman”), *Parangada*, *Naranari* (“man-woman”). *Ardhanarishvara* represents synthesis of masculine and feminine energies of the universe (*Purusha* and *Prakriti*) and illustrates how *Shakti*, the female principle of God, is inseparable from *Shiva*, the male principle of God. This image represents a transgendered entity. The union of these principles is exalted as the root and womb of all creation (Jordan, 2004). It is a composite androgynous form of *Shiva* and his consort *Parvati*. Both the *Shaktas* (devotees of *Shakti*) and the *Shaivas* (devotees of *Shiva*) of the Tantra school of thought

believe in the Divine Unity of Shakti with Shiva as the Ultimate Truth<sup>29</sup>. There have been many other various instances which gives us an idea that Hinduism as a religion does tolerate homosexuality.

For example in the *Bhagavata Purana*, *Vishnu* takes the form of enchantress, *Mohini* in order to trick the demons into giving up *Amrita*, the elixir of life. Shiva later becomes attracted to Mohini. In the *Brahmanda Purana*, *Shiva's* wife *Parvati* “hangs her head in shame” when she sees her husband’s pursuit of *Mohini*. In some stories *Shiva* asks *Vishnu* to take on the *Mohini* form again so he can see the actual transformation of himself (Vanita and Kidwai, 2001: 94). Stories in which Shiva knows of *Mohini's* true nature have been interpreted to suggest “the fluidity of gender in sexual attraction.” (Vanita and Kidwai, 2001: 102)

Based on the teachings of Siddhartha Gautama, Buddhism is considered a way of life for more than 700 million individuals across the globe. The fourth largest religion in the world, Buddhism is largely built on concepts that foster individual enlightenment and encourage personal responsibility. It is sometimes described more as a philosophy or psychology than a religion<sup>30</sup>.

Sexual orientation, specifically, was not elaborated upon by Siddhartha Gautama, nor is there any reference or guidance for lay people regarding sexual orientation or same-sex behavior within the Pali Canon, the scriptural texts that hold the Buddha’s original teachings. The *Vinyana*, a Buddhist text for monks, forbids Buddhist monks and nuns from having sexual relationships with men, women and those of other genders, such as *pandanka* (interpreted as those with indeterminate sexual characteristics or people who do not conform to sexual norms, such as prostitutes). These textual references do not target LGBTQ people specifically, as everyone within the monastic order is expected to refrain from all forms of sexual relations<sup>31</sup>. This practice is especially common within Theravada Buddhism, which focuses heavily on the monastic. Zen Buddhism does not make a distinction between same-sex and opposite-sex relationships. Instead, the expectation is not to harm, exploit or manipulate others, which would directly violate the third precept. For instance, Zen Buddhists often refer

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<sup>29</sup> <http://www.speakingtree.in/allslides/shiva-shakti-all-you-need-to-know-about-tantric-sex/m-lite>

<sup>30</sup> <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-buddhism>

<sup>31</sup> <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-buddhism>



to hedonism, ascetic masochism and prostitutions as practices that violate the “Middle Way”<sup>32</sup>.

Lay Buddhists (those who live outside the monastery) are expected to adhere to Five Precepts, the third of which is a vow 'not to engage in sexual misconduct. But what is sexual misconduct? (Trembath, 2008)

'Sexual misconduct' has thus traditionally been interpreted to include actions like coercive sex, sexual harassment, child molestation and adultery. As Homosexuality is not explicitly mentioned in any of the Buddha's sayings recorded in the *Pali Canon (Tripitaka)*, most interpreters have taken this to mean that homosexuality should be evaluated in the same way as heterosexuality, in accordance with the above principles"(ibid).

Christianity being the other growing religion in Nepal stands very clear in its views for homosexuals. In the visit to Micah Nepal, NGO, on October, 2017 at Kathmandu, Mr Thir Koirala, The Coordinator of Micah Nepal, very much stated that Christians condemn any act of homosexuality. As it is very clearly stated in the Holy Bible that homosexuality is a sin.

*“If a man has sexual relations with a man as one does with a woman, both of them have done what is detestable. They are put to death; their blood will be on their own heads” Bible (Leviticus 20: 13)*

However one needs to note that only 0.45% of population account for Christians, while 80.62% are Hindus and 10.74% are Buddhist. So even after having a supportive legal system and liberal religious points of view, Nepalese society is still culturally very conservative, especially when it comes to sexuality. Social mores and tradition see only two genders and sex as something between a man and woman. Introducing other expressions of sexuality may seem unusual and a bad influence of westernization or modernization. Self-identification with homosexuality is not easy due to family pressures and social shame. This can lead to forced marriages with the opposite sex. Sex education is not openly in use. Even educated people hesitate to speak about sex. In such a situation, talking about same sex relations is not an option (Khadka, 2017).

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<sup>32</sup> <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-buddhism>

#### 4.9 Role of BDS

Central to Nepal's political reforms on sexual and gender minority rights is the Blue Diamond Society (BDS) and their work with HIV prevention, advocacy and outreach. Community organizing by LGBT people in Kathmandu started informally around 2000 in Ratna Park. After months of social interactions in the park, Nepal's first LGBT community organization, Blue Diamond Society (BDS), was registered by pioneering LGBT activists Sunil Babu Pant, Manisha Dhakal, and Pinky Gurung with the government's Social Welfare Council as a sexual health and human rights organization with no explicit mention of homosexuality.<sup>33</sup> Other pioneers of the LGBT movement in Nepal that helped to establish BDS were Dolly Maharjan, Niruta Panday, Malaika Lama, Alex and Zora Bai.

BDS is now among the largest NGOs in the country and has a massive reach, visibility, and national influence. As Nepal's most prominent LGBT organization, it has established offices in more than 30 districts, networks in 50, and one hospice devoted to caring for HIV-positive MSM and transgender people. The organization also offers a host of HIV-related services, including educational programs, peer outreach, HIV testing, sexually transmitted infection (STI) treatment, safe-sex advice, and condom distribution. At the same time, the organization has taken on a significant national role as a respected advocate for policy change on a broad range of issues related to human rights, MSM, transgender persons, and health care.<sup>34</sup>

BDS was earlier established as a HIV prevention organisation working with sexual and gender minorities, BDS now conducts a range of activities primarily related to HIV prevention, such as condom and lubricant distribution and rights-oriented advocacy issues, including HIV awareness campaigns, peer support for sexual minorities, and legal counselling in 31 districts of Nepal (Blue Diamond Society 2012). Initially, BDS' registration as an HIV prevention organisation working with sexual and gender minorities, as opposed to an advocacy-based organisation, was necessary because of the government's hesitancy to mandate an organisation advocating for a population that

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<sup>33</sup> Nori, Dalia "The loudest whisper in society: Knowledge, Attitudes and Practice in regards to sexual health of transgender male to female in Kathmandu, Nepal," [https://gupea.ub.gu.se/bitstream/2077/33386/1/gupea\\_2077\\_33386\\_1.pdf](https://gupea.ub.gu.se/bitstream/2077/33386/1/gupea_2077_33386_1.pdf); Jo Becker, "Campaigning for Justice: Human Rights Advocacy in Practice," Stanford University Press: 2013

<sup>34</sup> In conversation with Mr. Parsu Ram Rai, Program Director of BDS, Proposal Writer, Human Right Activist

was and still is largely marginalised and misunderstood by Nepali society. BDS's initially supported by a USAID grant administered by the American organization Family Health International (now FHI 360) and focused on HIV prevention and service delivery aimed at halting and reversing the spread of HIV among transgender women and men having sex with men. Grants from Sidaction and Elton John AIDS Foundation were used for the care and support of PLHIV. BDS's emergence signalled the rise of LGBT rights activism which eventually expanded into public awareness campaigning and social mobilization<sup>35</sup>.

The principal focus on HIV was also in concert with prevailing funding paradigms as international donors began to fund HIV interventions in Nepal at that time and with an increasingly consolidated understanding of 'men who have sex with men' (MSM) and transgender peoples as an 'HIV risk population'. This mode of funding paralleled other strategies in South Asia, where interventions into social and sexual vulnerabilities in contexts of male-to-male sex had helped to consolidate international funding for large-scale community-based interventions in India and Bangladesh. Because of the global HIV pandemic and growing access to funding for HIV prevention work, BDS was able to quickly establish itself as a large nationwide organisation, especially as no other organisation was working on these issues in Nepal when funds began to be distributed for larger-scale programmes. Through their work, BDS was able, for the first time in Nepal, to begin to formally network and educate Nepal's sexual and gender minorities through development interventions such as HIV and sexuality awareness campaigns and condom distribution programmes (Boyce and Coyle, 2013).

Like many other NGOs, BDS initially focused on service delivery and then gradually moved into more political projects such as "awareness-raising, public education and social mobilization."<sup>36</sup> According to Pant, "We started by having conversations about condoms and lube and sexual health but then once we realized the problems we faced were systematic and not just about health issues, we decided it was time to get organized. After we were officially registered, we got some donor funds and could do

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<sup>35</sup> Program for Accountability in Nepal, "The Political Economy of Social Accountability in Nepal" 2010: <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>

<sup>36</sup> Program for Accountability in Nepal, "The Political Economy of Social Accountability in Nepal" 2010: <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>

condom outreach—but that was only the beginning of the work we needed to do” (Tamang, 2003).

Aside from the regular work of bailing out transgender people who were arrested (often as “public nuisances”) and providing basic sexual health education to people engaged in same-sex sexual activity, BDS began to build confidence and create a community around a rights-based social movement. Early research on LGBTI organizing identified police and other security forces as common sex work clients for metis, so when the situation turned violent, BDS’s protection work and advocacy was directly targeted at ending violence carried out by an arm of the state (ibid).

Said one former BDS employee who started as a volunteer in 2002: “Before it was different. We would get arrested and harassed and we would just manage. But when we got some support, some confidence from BDS telling us that we were not sick people and it was a problem with society instead, we became sometimes more bold than before.” BDS’s combination of one-on-one outreach that evolved into drop-in centers and more formal events has been noted as a good public health practice because it cultivates community and security: “...BDS has been providing different kinds of opportunities for the community members themselves to come and gather and share their experiences, and through their experiences [to] create an awareness among themselves about their own sexuality, their gender, and their basic human rights....” (Lesnikowska, 2009).

Individuals negotiated visibility delicately. Said a meti who volunteered at BDS from its initial days: “We didn’t know how to be ‘out’ or if we should. We were busy staying safe, we didn’t really have a vocabulary to explain ‘coming out’ to our families, and so it was usually just better to keep somewhat quiet so we could continue doing our work. Sunil coming out in the media was a big step—it sort of showed us that it could be done.” Pant, the visible leader of the movement, came out first to reporters after the arrest of some transgender people<sup>37</sup>. Research on sexual minorities has explained this struggle as “an evident tension between the need for sexual dissidents’ visibilisation in order to push agendas and their right to privacy.”<sup>38</sup> The contours of comfort remain delicate and highly individualized. This also affected how and when individuals became

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<sup>37</sup> ILGA, , <http://ilga.org/ilga/en/article/mhWtjKX1dD>

<sup>38</sup> Institute of Development Studies, “Working Paper 294: Whose Sexuality Counts? Poverty, Participation and Sexual Rights,” November 2007, <http://www.ids.ac.uk/files/dmfile/Wp294.pdf>

affiliated with organizations or the movement. One interviewee (Kathmandu, October 2017), a gay man, said: “I don’t think I will ever affiliate myself with BDS staff and their work. BDS is very public and there is no confidentiality of one’s identity.” Even today, some LGBTI people decline to associate with the movement or its organizations because of fears of social ostracization or “outing.”<sup>39</sup>

As the movement grew, LGBTI organizations encountered privacy and visibility issues at several junctures, most notably when it came to estimating the size of the sexual and gender minority populations—a crucial factor in garnering financial and political support. While there was pressure to delineate a “target community” for service provision and associated funding, visibility and privacy—while supported by NGOs—were often negotiated on a personal level. Similar issues have been observed with regards to data collection about LGBTI populations, namely that deeply-personal often-contested definitions, combined with discretion being used as a tool for protection, can mean that many people keep their sexual orientation or gender identity private—or “closeted.” From a measurement perspective, as one demographer noted, it can mean “we are attempting to measure a population that, by definition, does not want to be measured” (UNDP, USAID, 2014: 78).

So this was one of the main issues as the homosexual people themselves would not come out. So the BDS itself couldn’t help. But as time passed by, scenarios changed and laws changed. It was then the LGBTI individuals started to come at front. Also on my visit to the Blue Diamond Society in October 2018, I found out that how political parties and government would only pay attention to the LGBT community only when elections would come close. They would be more used as a vote bank.

Between the growing social and organisational networks and sponsored researches on Nepal’s sexual and gender minorities, BDS was able to articulate and advocate for greater social and political understanding and inclusion. Despite having had anti-sodomy laws at one time (Pant, 2011), sexual and gender minorities in Nepal never faced a strong legal tradition of anti-sodomy laws unlike elsewhere in South Asia nor a strong presence of religious orthodoxy that condemned same-sex sexualities and gender minorities (Boyce and Coyle, 2013).

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<sup>39</sup> Bibek Rajbhandari, “I’m Not Ready, Living Gay Nepal,” <http://www.livinggaynepal.info/imnotready.html>

However, the lack of both a strong legal tradition outlawing same-sex sexualities and the implementation of the little legal framework that did exist does not reflect the historical or contemporary social attitudes of greater Nepali society, which might be thought of as heteronormative, given, for example, predominant social and familial pressures to marry, bear children and so on, even if the social values associated with such expectations are changing. Despite the social tendency to conform to societal standards, BDS and Nepal's activists did not have to worry about pre-existing legislation that directly restricted the rights of people living outside heteronormative social expectations (ibid).

While stigmatisation and social marginalisation were and still are experienced by sexual and gender minorities in Nepal, different sexual and gender subjectivities are more or less likely to be socially stigmatised and discriminated against based on the social 'visibility' of their presence. For example, metis are more likely to be identified because their gender identity and expression (as female or effeminate) contradicts social expectations from their family and larger society. On the other hand, their male partners, locally referred to as ta, are oftentimes only socially identifiable through their often concealed relationships with metis because they are more able to conform to social expectations and gender norms. As a result of this dynamic, metis and other transgender people are often socially marginalised; sometimes even by their male partners who frequently deny any interaction with them. They may struggle to find employment, outside of a narrow range of professions associated with the entertainment or beauty industries, because employers are less likely to take on someone who performs in terms of explicit gender variance. As such, many metis and other transgender people may be disproportionately affected by poverty and social isolation (ibid).

Given limited opportunities to earn a living otherwise, many metis and other transgender people are more likely to engage in sex work, and thereby often suffer from enhanced sexual and related risks. While there are differing understandings of sex work and its role in sex workers' lives that this research did not explore, participants stressed

the narrow field of choices for work and livelihood that are defined by a wider set of social prejudices (FGD)<sup>40</sup>.

Most notable and researched is the South Asian community and tradition of hijras,<sup>41</sup> who have historically existed ambiguously in relation to larger society. Hijras were not historically a part of Nepal's social consciousness and primarily lived in border regions in the southern plains of Nepal. For these reasons, many Nepalis understand hijras, and sexual and gender minorities, as a largely non-Nepali, 'outsider', or Indian phenomenon and isolated except in prescribed cultural roles and their relations with other sexual and gender minorities who are able to socially conform (Boyce and Coyle, 2013).

Many third gender-identified people are therefore at the core of BDS' social and outreach networks because of BDS' willingness and ability to publically represent themselves and their identities to Nepali society. Moreover, BDS has offered an important context for employment for sexual and gender minorities as peer outreach workers. Consequently and understandably, issues related to sexualities and gender identities that in some way have necessitated public openness, such as third gender identity, have been at the forefront of BDS' advocacy work because of its need to have openly identified sexual or gender minority participants in their movement. For Nepal's third gender population, the perceived risk of joining an organisation like BDS and formally organising has in some ways been minimal because they already faced discrimination from the police and society on a regular basis because of their gender identity and expression (ibid).

Because of their funding for and successful work on HIV prevention issues, BDS has been able to use its networks to represent and advocate for the rights of sexual and gender minorities on a national level. In this sense, donor organisations, primarily bilateral organisations and INGOs (international non-governmental organisations), have played an important role in supporting BDS' work and its subsequent advocacy activities. Since its establishment, BDS has received funds from a wide range of donors

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<sup>40</sup> UNAIDS has subsequently shifted terminology from "at-risk" to "key" populations in an attempt to reduce the use of stigmatizing acronyms. See: "UNAIDS Terminology Guidelines," 2011, [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118\\_terminology-guidelines\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_en.pdf)

<sup>41</sup> Found across South Asia, hijras are commonly understood as transgender women, traditionally male-bodied, who often (but not always) undergo a ritual castration and play a role in various religious and cultural ceremonies and rites. Hijra is a complex subject category, however, and cannot be reduced to simplistic stereotypes.

ranging from INGOs and bilateral organisations working directly on the issue of same-sex sexualities and gender minorities to bilateral and state donor agencies, including Family Health International, the Naz Foundation International, USAID, DFID, UNICEF, Global Fund and Save the Children. Without funding for HIV prevention activities from these organisations, it is unlikely that BDS would have been able to build the strong organisational network that has played an important role in its advocacy and outreach work (ibid).

On the other hand, while international funding has in many ways provided the financial support for Nepal's movement for sexual and gender equality, donors and international organisations have in some ways struggled to understand the sexual and gender minorities in Nepal outside of the framework of HIV prevention and advocacy work. As a result of funding and research being attached to HIV prevention work, much of what has been written on sexual and gender minorities in Nepal has focused on their potential risk of HIV contraction and transmission. Only recently, with more funding for advocacy-based research and programmes, have new studies been conducted on the discrimination, sexual violence and marginalisation faced by open sexual and gender minorities in Nepal (Knight, 2015).

Since 2001, many other LGBT organizations have been established in Kathmandu and in most major and minor urban areas of the country. Presently there are over fifty LGBT organizations in the country, providing services to more than 40 out of 75 districts. Many of them are branch offices of BDS and are affiliated to its sister organization the FSGMN<sup>42</sup>. Mitini Nepal was established in 2007<sup>43</sup> and was the first organization to be dedicated specifically to LBT rights. Other groups such as the National Forum for Democracy and Development (NFDD), Inclusive Forum Nepal (IFN), Gay and Lesbian Sexual Minorities Network (GLSMN) and Core Nepal operate independently. The broad range of community groups working on LGBT issues and their differing mandates and target populations reflect the diversity and scope of their work on HIV, health, LGBT issues, and broader human rights concerns. These organizations have

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<sup>42</sup> FSGMN was established in 2007, as an umbrella network organization of LGBT organizations that focuses on capacity building and network strengthening of its member organizations in Nepal.

<sup>43</sup> Mitini Nepal was initially a project of BDS but eventually evolved into a separate licensed organization.



lobbied and raised awareness about rights violations against LGBT people in their own homes, in society, and by the state (UNDP, USAIDS, 2014: 56).

BDS's leadership was accused of mismanagement and financial irregularities by the Kathmandu District Administration Office (DAO) in 2012 and 2013. As a result, life saving and other services were disrupted and staff were unpaid for as long as eight months due to its operating license not being renewed. Subsequent investigations by multiple government agencies (by the Kathmandu District Administration Office and the Social Welfare Council) and an investigation by BDS' largest donor (The Officer of the Inspector General/OIG at the Global Fund to Fight AIDS, Tuberculosis and Malaria) proved inconclusive led to the renewal of BDS' operating license (ibid).

Human Rights Watch described the situation as harassment of BDS by the government: "The government has repeatedly said it would release a report regarding corruption allegations against Blue Diamond Society, but several months have passed and no report has been published."<sup>44</sup> The Office of the Inspector General of the Global Fund has yet to issue its report on BDS even though it concluded its investigation in July 2013.

HIV funding has been focused exclusively on transgender women and MSM as these subgroups are at exponentially higher risk of contracting HIV than the general population and other sub-groups have been left out of programming<sup>45</sup>. The HIV and health emphasis has primarily strengthened transgender female and gay male leadership in the burgeoning LGBT rights movement. In 2014, 13 years after its founding, a woman from the Terai, Monica Jha, became the director of BDS (currently Mr. Sudeep Bahadur Singh).

Women's rights organizations have supported LGBT rights issues at key junctures. The Forum on Women, Law and Development (FWLD) assisted BDS file a case against the

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<sup>44</sup> Human Rights Watch (2013) Nepal: Climate of Fear Imperils LGBT People, 1 April 2013. Retrieved 30 July 2014 from <http://www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people> , p. 107

<sup>45</sup> According to a Lancet special issue on HIV in MSM published in July 2012, MSM are more than 17 times more likely to contract HIV than the general population and transgender women are as much as 48 times more likely: [http://www.amfar.org/uploadedFiles/\\_amfarorg/On\\_the\\_Hill/SummaryPtsLancet2012.pdf](http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/SummaryPtsLancet2012.pdf) and <http://www.thelancet.com/series/hiv-in-men-who-have-sex-with-men>

army when two women were accused of lesbianism and expelled in 2007<sup>46</sup>. In 2005, BDS supported a lesbian couple escape threats of rape and death from their families when the latter discovered they were in a relationship. This couple eventually established Mitini Nepal (Knight and Miller, 2013). The group later became Nepal's first independent LBT rights organization and is now a leader in the sector. However, Mitini Nepal's programmatic reach and capacity is relatively limited (UNDP, USAIDS, 2014).

A controversial issue is population estimations. The estimated size of a target group can be used to seek political and financial support. If the LGBT population in Nepal is sizeable, it could be argued that sufficient resources need to be mobilized for supportive programs. However, privacy issues remain a concern in studies of this type. Similar issues have been raised in relation to data collection about sexual and gender minority populations globally and Nepal is no exception (Gates, 2012).

To initially appeal to international donors and UN agencies, LGBT organizations in Nepal and the region focused primarily on HIV prevention and treatment and community systems strengthening. Recently there has been greater recognition of the need to work on promoting supportive legal environments and strengthening human rights for LGBT people. Based on this momentum, bilateral and multilateral donors have increasingly funded LGBT rights related programs and/or ensured the inclusion of LGBT issues in broader development programming. This support has been led by the governments of the United States, Sweden, Denmark, Norway, and Australia and by the United Nations (UNDP, USAID, 2014: 61).

As LGBT NGOs have become more involved in policy dialogues and program implementation combined with the lack of a formal oversight mechanism, they have often become targets for social and political 'mudslinging'. These have included accusations of mismanagement, corruption, cronyism, and nepotism. NGOs have also been accused of representing foreign powers at the expense of national interests (Mishra, 2001). They are also vulnerable to media and public criticism as their principal accountability is international donors (ibid).

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<sup>46</sup> UK Gay News, "Still No Hearing Date for Sacked Soldiers Accused of Being Lesbians." 17 Nov 2007: <http://www.ukgaynews.org.uk/Archive/07/Nov/1602.htm>

Thus one can see what an important role has BDS played in establishing the legal laws and rules for the LGBT. It is BDS which has uplifted the social status of the LGBT. Besides advocating for LGBT rights, BDS as well organises many programs like the First south Asian LGBTI Sports Festival in Kathmandu, 2012, IDAHOT- International Day Against Homophobia, Transphobia and Biphobia in Kathmandu, 2014, Trans Men Workshop in India , 2014 etc. Such programs and events provides tremendous opportunities for sexual and gender minority who have been marginalised all their lives to prove their inner worth. Participating in games helps them to build their self-confidence and to create awareness about LGBTI issues. It has been great for helping the LGBT to come out openly in society, even though they might face criticisms yet it is BDS which has given them a shelter and a voice which needs to be heard. There are many other NGO's as well but it is BDS which has large networks, and branches and they are not restricted in any way either by government or media. And it is from BDS that other organisations have been formed.

#### **4.10 Role of Media**

The role of the Nepali media in informing and educating the public about LGBT issues is significant. Radio penetration throughout the country is very high. Urban populations generally have access to electronic media such as television, social media, and/or print media. It is essential that information about LGBT events and issues disseminated by the media be neutral and accurate. According to a UNDP and Centre for Advocacy and Research (CFAR) report about South Asia, researchers found prejudiced, inaccurate and sensationalized news coverage that has increased stigma, distorted the public's views of sexual orientation and gender identity issues, reinforced harmful stereotypes, and inaccurately reported on community issues<sup>47</sup>.

Despite the legal recognition of sexual and gender minorities in Nepal, traditional gender identities and heteronormativity have shaped media coverage and approach towards LGBT issues. The majority of participants with whom I had conversation noted that LGBT issues are regularly covered in the media, but the coverage is often about scandalous stories rather than progressive or thoughtful reporting.

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<sup>47</sup> UNDP and Centre for Advocacy and Research. "A Framework for Media Engagement on Human Rights, Sexual Orientation and Gender Identity in South Asia," New Delhi, April 2014,: [http://asia-pacific.undp.org/content/rbap/en/home/library/hiv\\_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html](http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html) (Accessed July, 2014)

The media widely reported on how crucial HIV and health care services for marginalized subpopulations of MSM and transgender women were jeopardized by social and structural barriers<sup>48</sup>. There is clear recognition that media engagement thus far has helped break the silence on an issue (sexuality) that was often treated as being taboo and off limits. Coverage of human rights violations against the LGBT community by the media also served as documentation which served as evidence by the Supreme Court in 2007 when it pronounced the historic judgment to stop all forms of discrimination against sexual and gender minorities (Knight, 2015).

The Nepali media have also played a crucial role in advancing human rights protections for LGBT people through their reporting of hate crimes. They often positively report on events and activism organized by community groups such as the annual gay pride parades held on the Hindu festival of Gai Jatra, including the parade in Kathmandu in August 2014. English language dailies such as The Kathmandu Post<sup>49</sup>, Republica and The Himalayan Times along with weeklies such as Nepali Times and monthlies such as Wave and Himal South Asia have been particularly progressive and balanced in their reporting about LGBT issues and challenges. Some of the topics covered by the media include an opinion-editorial (op-ed) on gay marriage in The Kathmandu Post and Nepali Times pieces about gay marriage about backtracking on commitments by the state on LGBT rights (Pant, 2014) and about the work of the Constituent Assembly's committee on same-sex marriage<sup>50</sup>. The International coverage of these events has also been supportive.

There has been an increase in social awareness and acceptance of sexual and gender diversity due to the increasing exposure of LGBT issues and activists in the national and international media. A radio program called Pahichan has been initiated by BDS. It is broadcast on 11 FM stations throughout Nepal. The program communicates information and advice about sexual and gender minority health and rights issues. It has become an important platform which provide support for the LGBT community. The

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<sup>48</sup> UNDP and Centre for Advocacy and Research. "A Framework for Media Engagement on Human Rights, Sexual Orientation and Gender Identity in South Asia," New Delhi, April 2014, : [http://asia-pacific.undp.org/content/rbap/en/home/library/hiv\\_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html](http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html) (Accessed July, 2014)

<sup>49</sup> Thapa, Saurav Jung "The Case for Gay Marriage," The Kathmandu Post, 2 September 2012, Available at <http://www.ekantipur.com/the-kathmandu-post/2012/09/01/free-the-words/the-case-for-gay-marriage/239117.html>

<sup>50</sup> Teo, Basil Edward "Equality in Paper At Least," Nepali Times, 1 August 2014 <http://nepalitimes.com/article/nation/LGBT-%20equality-inpaper-at-least,1563>

LGBT community especially belonging from rural areas are able to voice their concerns and get advice and support.

A strategy to mainstream LGBT issues into different types of media outlets may eventually produce more concrete results and wider public acceptance of sexual diversity rather than limiting discussion of these issues to a narrow audience. This may be happening. Community radio stations which have wider coverage and larger influence are reported to have incorporated L GBT issues in their radio dramas and programs. Sunil Pant hosted a talk show on gender and sexuality issues in the state-run Nepal Television. Nepali movies on same-sex relationships are now being produced (UNDP, USAID, 2014: 32).

Despite many LGBT-related advances in Nepal, print and broadcast media generally do not prioritize LGBT issues as key topics and invest in understanding them. “As long as we do not come out in public as LGBT and start talking about our issues, we will never be a priority,” said Bishnu Adhikari, a prominent transgender male activist and a participant at the National Dialogue and one of the few openly LGBT media professionals in the country.

The LGBT community and advocates should sensitize and train journalists in all mediums (print, broadcast and Internet) on SOGI and LGBT issues. The media should be encouraged to act as a watchdog to promote SOGI sensitivity. High profile celebrities, leaders, and officials who will speak out and advocate on LGBT rights issues should be used as role models to promote positive self-image for the LGBT communities. There is an urgent need to ensure that different LGBT voices are heard so that the diversity of the community can be demonstrated and not just the narrow voice of any one subgroup. It is essential that messages are about a variety of LGBT issues are covered by the media and they do not just limit themselves to covering HIV. Social media, networking, multimedia, drama and flash mobs should be utilized to educate people. LGBT communities need to engage actively with mainstream media to raise awareness and improve understanding of the full range of LGBT identities, issues, and challenges. Relying solely on LGBT-focused programs or outlets will be inadequate and ineffective in raising broader social awareness. Media outlets should move away from sensational coverage of transgender sex stories and instead promote stories of LGBT successes and achievements. Interview positive, accepting families

and parents to create effective role models. Media outlets should develop community radio programs and develop strategies in partnership with a range of LGBT organizations.

#### **4.11 Everyday Life Experiences of Sexual Minorities**

After seeing different aspects of the lifeworlds of sexual minorities and the discrimination and struggles they go through every day in the society, this section would mainly try to understand the everyday life of sexual minorities from a theoretical point of view using the understandings from the writings of Henri Lefebvre, a renowned scholar in the study of everydayness. Henri Lefebvre, in his monumental work "*Critique of Everyday life*" (1991), tries to explore the concept of everyday life from a Marxian point of view and holds that everyday life is exploitative, oppressive and relentlessly controlled one and also asserts that there are energies within the everyday that could be used to transform it. In that sense, everyday always held out the possibility of its own transformation. He describes everyday life as: "*Everyday life is profoundly related to all activities, and encompasses them withal their differences and their conflicts: it is their meeting place, their bond, their common ground. And it is in everyday life that the sum total of relations which make the human - and every human being - a whole takes its shape and its form*" (Lefebvre, 1991:97). Lefebvre proposes that the study of everyday life is a study of alienation under the conditions of modernity and that the transformation of everyday life will be bought about by the de-alienation of human beings and the creation of 'total person'. Where, totality does not wipe out differences and it does not necessarily leads to universality. It is totality which takes diversity and difference within its ambit of analysis (ibid).

What Lefebvre mainly tries to understand by these concepts is the interrelatedness of all the aspects of life. The everyday life cannot be seen a related to only certain kinds of activities or social spheres, it is a combination of all the aspects of life in its totality. If we consider the plight of sexual minorities in this regard, then even their subjugation is not just related to one aspect of life. It is political because they are deprived of their rights, it is social because they are stigmatized and outlawed from the society, and it is also religion and morality on the grounds of which sexual minorities are discriminated. Even economically, the hijras, kothi, etc. are deprived of a proper living source of

income leaving them with no other option than begging, performing and prostitution<sup>51</sup>. But still, the framework adopted to emancipate sexual minorities is mainly a political in nature. However, in the case of sexual minorities, it is the social manifestations of the political problem that needs to be approached in a comprehensive manner. It has to be done in its totality and not in fragments because as Lefebvre says the different aspects of life is always interrelated, it is not rigid compartments without overlapping (ibid).

For Lefebvre, the everyday life is a challenge to the general social atomization, a separation of society and experience into discrete realms of the political, the aesthetic, the sexual, the economic and so on; of life divided into labour, love leisure, etc. thus, by stressing on the interrelatedness of all these social realms from the point of everydayness or everyday life, Lefebvre points out the limitation in transforming any one particular sphere in isolation. The possibility of transforming the society via independent economic and political solutions is not just a mistake but a fundamental misunderstanding of the revolutionary project (ibid). Everyday life is an interconnected one, strict distinctions are hard to be made. Thus, in case of sexual minorities and the issue of granting sexual rights to them, interrelatedness of life needs to be concerned and understood.

#### **4.12 Conclusion**

The presence of various gender and sexual identities goes back centuries and is recorded in ancient religious texts. Additionally, Nepal's two main religions—Hinduism and Buddhism—are tolerant of gender and sexual minorities and lack the violent religious extremism that exists in some other regional countries. Also, there is a need to understand the lives of sexual minorities because they are probably one of the most discriminated section of the society. They live their lives in darkness in the fear of society, family and other pressures. And any effort to bring their plight into a discussion table is always faced with severe criticisms in the name of religion, morality and even culture.

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<sup>51</sup> Of course the class factor is evident here when we differentiate the hijras with the LGBT community. But it is altogether a different debate. And nonetheless, hijras and kothis are also sexual minorities who are deprived of their complete and secured life on the grounds of their sexuality or sexual orientation. And we are considering the overall lives of sexual minorities here which needs to be considered in their totality and not fragmented manner

The heteronormative social structure is so ingrained in the present society along with the circles of silence when it comes to the issues of sexuality (in Nepal) that such topics are always discarded as worthy of a serious discussion. But by the creative tools of resistance<sup>52</sup> against the dominant paradigm, adopted by the rise of Queer Movement in Nepal, the issue has come into limelight since the last decade.

The NGOs and other organizations have played a very important part in bringing about social change, and changes within the individual self of queer. NGOs have contributed immensely to draw attention to the presence of sexual minorities in the society. The organizations and NGOs involved with the subject have made their place by reorganizing the relationship between individual and society on one hand and individual and their inner self on the other. Awareness programs, movie screening, pamphlets, parties, drama, helpline no. etc are all kinds of innovative techniques used by them to foster change in the society by making it more inclusive in addressing the issue of sexual minorities.

Though it is true that the NGOs working in the field of sexuality is not without fault, yet it must also be understood that sexuality itself is such a complicated and subjective issue that generalization in its slightest form becomes detrimental to the interest of some. However, for the purpose of bringing about a change, such generalization for a specific period of time, is also needed. It is because only by joining hands in the struggle against dominant heterosexual model of the society, can the sexual minorities truly liberate themselves from the clutches of marginalization and domination of the conventional society.

The discrimination of sexual minorities is on many levels and affects almost every aspects of that individual's life. His understanding of the self would then define his relations with the society and parents, his political orientation, his believes and faith, his level of comfort with friend and other acquaintances and his overall personality. One aspect of his life has a direct effect on the other aspects. Thus, it is really hard to distinguish which aspect of their lives is focused here. If it is said that, it is mainly political in its orientation, then we tend to forget that though the framework is political

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<sup>52</sup> Creative tools of resistance basically includes cinema, short films, documentaries, street drams, journals, academic works, autobiographies, pride parades, etc.



but its representations is very much social, moral and also cultural. It is almost like a ripple effect where one ripple leads into the other and so on.

Thus, to conclude we can say that the everyday lives of sexual minorities is a complex blend of struggles both within oneself (as to discover the self and decide ‘come out’ openly) and with the society. It involves emotions, practices, orientations, desires, identity, body, politics, society and almost every relation in life, which can never be distinguished and separated from one another. One must consider all these factors to curve ideal lives for the sexual minorities in Nepal or any other part of the world. Inclusivity and ‘totality’ (not universality) must be the guiding principles for full realization of their potential.

## CHAPTER V

### Conclusion

The present study titled “Socio- Political Discourses on Sexual Minorities in Nepal” was basically embarked on to understand conceptual and theoretical debates on gender and sexual minorities and thereby discuss the incessant marginalization of sexual minorities in the name of religion, culture, law, politics, and nature within the society with focus on Nepal. This study offers a descriptive perspective on one of the most ignored section of the society. Their alternative sexual identity has always been submerged beneath the dominant heterosexual structure. And this is due to the heteronormative structure of society which considers heterosexuality as the normal and dominant mode of organising sexuality. The study was conducted through in-depth interviews and participant observations which of course had its limitations in terms of universalization of the findings. But it was able to comprehend its views under a post modern feminist approach of study.

Using a post feminist theoretical understanding, this study tried to problematise the concepts of gender and sexuality. Investigating the concept of gender and sexuality from diverse theoretical lens helped the study to enrich its insight deep into the theme and also develop a comprehensive understanding of the variety imbibed within the concepts. Drawing attention to the lived experiences and practices of sexual minorities (taking Nepal as reference), this study also sought to analyse the different dimensions of the Nepal Queer Movement and its impact within the Nepalese society and vice versa.

Discourses around sexuality have suffered an extensive treatment of silence and rejection within the traditional society. During the latter part of the twentieth century, with the surfacing of alternative sexuality. This opened the Pandora’s Box of troubles upon the heteronormative structure of the society which was worshiped and unquestioned till then. It raised some fundamental questions regarding sexual norms, performativity of gender, sexual fluidity and state interventions on these. As discussed in the chapters, constantly pressurized to fit within the dominant paradigm of the society, sexual minorities endure pain in the constitution of their own selves. Norms are fabricated in the minds of individuals at a very early age due to socialisation process. A boy is supposed to dress in blue and girl in pink. A boy is supposed to play

with guns and masculine toys while girl is supposed to play with dolls and house building toys. This thus forms the idea of sexual conduct of a girl or boy. And this tends to inform all their future conducts. This often leads to the problem of “coming out” and “self-denials” on the grounds of fear or rejection. In that manner, the lifeworlds of sexual minorities becomes restricted and a constrained one. In Nepal, the institutions of the state has undoubtedly an important role by providing the legal rights to the sexual minorities. However the role of culture, customs and society also cannot be overlooked as these constructs of society very much hinder the development of sexual minorities. They further penetrate restrictions. Queer people connect through common sexual and gender non-conformity, social struggles, and political ideologies.

There is a tendency to naturalize heterosexuality as the only mode of organizing sexuality subjugating all the other modes to the positions of inferiority. In this regard there is a “hierarchical valuation of sex acts” which subjugates all sex acts expecting the one that fits the dominant paradigm. Because of this kind of a social construction, the persons who are at the top of sexual hierarchy are certified as respectable, legal and socially acceptable. While those ranks low at this scale are seen from the eyes of criminality, disputability and are encountered to various kinds of sanctions. Post modern feminism and queer theory, in this regard enriches the study of sexuality and gender by making it more inclusive in nature. By exposing some fundamental flaws in the very epistemology of the terms sex and gender, these theorists<sup>1</sup> have been able to open new horizons of knowledge which until recently was subjugated by the dominant paradigm of heteronormativity.

Compulsory heterosexuality leads to stigma and prejudices which results in discrimination, social and economic marginalization, persecution and mistreatment. The fear of being different from the mainstream society and thus rejected often leads the sexual minorities to lead “double lives”. The leading of double lives is a vivid picture of the manner in which heteronormative structure of the society encroaches the lives of sexual minorities and urges them to live a life in shadows. Thus, the everyday lives of sexual minorities is a complex blend of struggles both within oneself (as to discover the self and decide ‘come out’ openly) and with the society. It involves emotions, practices, orientations, desires, identity, body, politics, society and

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<sup>1</sup> Butler, 1990, 2004; Namaste, 2000; Rubin, 1989; Vance, 1989, etc.

almost every relation in life, which can never be distinguished and separated from one another.

Given this background, this study brought to light several aspects of the lives of sexual minorities and understand it from a theoretical point of view. The postmodern deconstruction of the terms gender and sexuality highlighted the exclusionist build-up of traditional feminist theories which could not factor in the experiences of sexual minorities into the debate of sexuality and gender.

Being a historical descriptive research, the main questions sought to answer in this research were:

1. How does queer theories and post-structural feminism problematize the marginalization of sexual minorities?
2. What are the legal laws and political institutions for LGBTQ issues in Nepal?
3. How heteronormative constructs of the Nepalese society addresses the sexual minorities?
4. What role does social institutions play in understanding the LGBTQ community in Nepal?

The issues related and the answers to these questions are discussed in details in the chapters of this dissertation. The discussions are comprehended below.

A comprehensive literature review was done in the background in order to analyse how the post modern feminists/ queer theory problematized feminist notions of gender and subjugation of sexual minorities. The first chapter analysed the theoretical and conceptual base of the terms gender and sexuality. It has problematized the feminist notions of gender and sexuality as exclusionist one. The feminist notion represent the voice of the dominant paradigm of heterosexuality. It holds that feminism as a theory is flawed from the very beginning itself as it is based upon the idea of a gender binary system where the stand for sexual minorities can hardly be addressed. At the heart of its referent is the binary sexes, thus ignoring the other gender forms and varieties. Postmodern and post structural feminist highlights the defects within the feminist notion of the same which basically stood for a gender binary and rigid gender identity system of analysis. They draw upon the postmodern notions of “sexuality as an artificial creation”, “sexual fluidity”, “performative gender”, “instability of gender identities”, etc. Further, queer theory also provided

valuable insights into the topic by problematizing fixed categories and making room for multiple, plural or variable identity and any behaviour generally and traditionally considered deviant and transgressive in nature.

It did so by rejecting any hierarchy and distinction between central/peripheral and primary/marginal both in relation to sexual identity as well as sexual orientation, Queer theory upholds that is this difference that is considered to be the cause of hierarchy. When this difference is reinforced, it widens the distance between normal considered superior and abnormal considered inferior. It denied that heterosexuality is the only form of sexuality as it is expressed between the opposite sexes, instead it stressed upon the point that each sexual orientation to be equivalent, whether it is expressed towards the opposite sex or the same sex or to both sexes.

The study was also set out to understand about the legal laws and political institution development for the LGBT individuals. The second chapter thoroughly describes the very beginning of queer movement in Nepal. It provides insight to each and every small court cases which led to development of the sexual minorities with focus on 2015 Constitution and 2007 Supreme Court Verdict.

And finally this study also very much encapsulates about how heteronormative society addresses the sexual minorities and how do socio-cultural institutions address the LGBTQ community. This is very much discussed in the third chapter. This chapter also dwells on the everyday lifeworld and life experiences of the sexual minorities. Going through biographical studies and depending upon the information from the field study, it is understood how the lived experiences of sexual minorities is endowed with rejection and fear. This chapter also endeavours to explore the answer to the question of how social institutions like religion and culture respond to LGBT issues. Self denials, leading double lives, violence from police, rejection from family, etc, all are examples of ways in which the heteronormative structure of the society marginalizes sexual minorities by restricting them from asserting their own identity and desires. What was very evident was that even though the country has legal laws and rights very much favourable for the LGBT individuals, yet that did not guarantee that those individuals would come out in open. And that is more so because of the culture and the very patriarchal society that Nepal has. Thus there exists a gap between the laws and its application on the ground level. Furthermore Nepal being a

rigidly patriarch society, it's more troublesome for lesbians to come out as opposed to gay men.

Nepal does not have high levels of overt homophobia, there is still an incredible social pressure to follow a traditional, heterosexual lifestyle. In fact, “what makes Nepal an interesting case study is the many ways in which sexual and gender minority peoples have been able to advance a progressive legislative agenda and reform the state’s gender and sexual policies despite the prevailing conservative social environment regarding attitudes toward sexuality and gender ‘difference’” (Boyce and Coyle, 2013). Social attitudes toward sexual and gender minorities are still in a complex state. Many LGBTQ individuals are still very much marginalised and discriminated than the current legislation might suggest. A prime example, even though the 2007 Supreme Court case promised the assignment of third gender citizenship to all who felt that they fit this category, only a few individuals have been able to obtain these certificates. There is a lack of discernible change. Without the citizenship certificates, third gender individuals can't be recognized as persons before the law. Thus they lack the tools necessary to fully participate in public life in Nepal. Logistical problems, discriminations on the part of census-takers, and fear among third gender are marring the historic process (Knight, 2011).

However, whatever constraints might be, but one has to acknowledge the present of a strong legal rights and basis for the LGBTQ individuals. While striving for democracy in a country is in itself a momentous journey, what adds icing to the cake is that Nepal is the first nation in Asia to constitutionally grant equal rights and protection against discrimination to its LGBTQ community. The present of a strong legal foundation itself gives hope for the LGBTQ individuals to grow further and develop. One also needs to understand that by just having a legal foundation does not guarantee that in ground level, there would be same equal treatment of the sexual minorities. Thus it is very important to understand the legal jurisdiction and as well as the social realities. Their psycho-social analysis and hidden voice needs to be explored by the policy makers and academia.

As eloquently explained by Boyce and Coyle, “any understanding of Nepal as a progressive legal example of same-sex sexuality and transgender activism must also consider the social realities, prevailing prejudices and the persistent of harassment and

violence toward sexual and gender minority persons”(Greene, 2015) . The changing legislature is absolutely very much a step in the right direction. However at the same time the social attitudes toward sexuality and gender must as well undergo much more dramatic change. Only then the sexual minorities can feel that they have reached equality in Nepali society.

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