

# Chapter-One

## Introduction

Decade long insurgency, success of April uprising 2006 and its impact on the empowerment of marginalized section especially homosexual - sexual minority's issues are mentioned in this chapter. Further, background of LGBT movement in Nepal, landmark decision of Supreme Court in relation to LGBTIs, representation of gay in Constitution Assembly Member, government initiatives towards LGBTIs along with statement of problems, objectives, rational and organizational structure of the study are mentioned in this Introduction chapter.

### 1.1 Background of the study:

After April uprising (*Jana-andolan 2<sup>nd</sup>*) 2006, the Government of Nepal and the Unified Communist Party of Nepal (Maoist) signed in Comprehensive Peace Accord, on November 21, 2006 which formally ended the decade long armed conflict in Nepal. Thereafter the Interim Constitution 2007 and the election of Constituent Assembly (CA) made possible to declare Nepal as a Federal Democratic Republic Country. The political movement of April 2006 was primarily directed to ensure displacement of arbitrary rule and empowerment of marginalized section of the population (NHRC, 2011). Nepal's shifted to federal democratic system creates opportunities to social inclusions and political transformation. Nepal has made significant strides towards ensuring equality for lesbian, gay, bisexual, transgender, and intersex people (LGBTI)<sup>1</sup> in recent years. Yet progress remains tenuous (HRW, 2012). After a long decade insurgency, Nepal has made rapid progress on at least one front: the legal recognition of gays and lesbians (Pulitzer Centre, 2011).

Heterosexuality is taken as a common phenomenon in society. It represents what is normal, predetermined and expected. This perception is so dominant in society due to which rest of the sexual orientation is considered as unnatural, abnormal and problematic. Gender-based violence, including sexual violence was a common feature of the 10 years-long armed conflict between the security forces and the Communist Party of Nepal- Maoist (CPNM), yet few individual incidents were reported (*Across*

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<sup>1</sup> The term lesbian, gay, bisexual, transgender and intersex are used in report, but often abbreviated to LGBTI. The terms are used to refer to same-sex behavior, identities or relationships and non- binary gender identities.

*The Lines, 2011*). In every society, there are beliefs, attitudes and values concerning sexuality that affect a whole host of everyday social relations and norms (Runeborg, 2008). Sexual Orientation and Gender Identity (SOGI) has been a major concern for the modern community of Nepal. Everyone has a sexual orientation whether it be homosexual, bisexual or heterosexual (Jacobson, & Jansson, 2007). Although sexuality is a natural part of human life it is often neglected and mainly dealt with in relation to reproduction, disease, violence and oppression. The most challenging issues for LGBTIs are the existing legal mechanism and traditional social mindset.

Although, Supreme Court (SC), 2007, of Nepal had given a Directive Order to the state to recognize the LGBTI as a marginalized group, respect their dignified life and conduct a research about same sex marriage (Supreme Court, 2007). In regards to Court order nothing had happened expect the establishment of a seven member study committee under the Ministry of Health which even could not submit their report at this writing.

Nepal's first publicly leading gay rights activist Mr. Sunil Babu Pant had selected as a CA Member from Communist Party of Nepal, United (CPN,U). He argued that society in general is always ready to respect one another, support each other, living in harmony together – regardless of whom they choose to love (Panta, 2008). However, the present situation is not seems as friendly as he claimed during his speech at UN, New York. Still, the presence of conservative extremists symbols the obstacles in Nepal to share the human rights, equality and justice to homosexual community. Furthermore, *Muluki Ain*, 1962 of Nepal, has still the provisions ‘on bestiality’ which include sodomy or homosexuality as unnatural sex. According to the provision this type of unnatural intercourse shall be liable to the punishment of imprisonment for a term not exceeding one year and a fine up to Five Thousand Rupees. Nepalese laws do not explicitly criminalize homosexuality, but an "unnatural sex act" currently carries a prison term of up to a year (BBC News, 2007).

Recently, Government of Nepal instructed to District Administrative Office (DAO) through Gazette (*Nepal Rajpatra*) on 21 June 2012, to provide citizenship to third gender mentioning 'other' as gender option along with 'male' and 'female' (Kantipur, National Daily, 2012). Government initiatives at the ministerial level on gender and sexual minorities also include Memorandum of Understanding (MOU) between Ministry of Women, Children and Social Welfare (MOWCSW) and Blue Diamond

Society (BDS) on 28 July 2010. They undertook review of laws and government policies against sexual and gender minorities (BDS, 2010). National Human Rights Action Plan (NHRAP), 2010 of the government of Nepal talks about the protection of gender and sexual minorities and establishment of rehabilitation centre with allocating of budget NRs. 25, 30 and 30 Lakhs for financial support respectively for the fiscal year 2066 to 2068 BS (2010 to 2013 AD) to establishment of community centre. Further, Interim Constitution, 2007 article 13, used 'person' in place of 'men' and 'women' and guaranteed the right non- discrimination, articles, 33 and 34 accepted the provisions of repealing all discriminatory laws. In addition, Central Bureau of Statistics (CBS) of Nepal and Election Commission of Nepal had mentioned 'third-gender' in their form whereas National Human Rights Commission (NHRC) and Investment Bank of Nepal mentioned 'other' as gender option along with 'male' and 'female' in their form (BDS, 2010). In spite of all these commendable efforts, in practical life no progress had been made towards recognizing the homosexual relation as well as obtaining citizenship as instructed by government. Acceptance by the law does not always translate into acceptance by the general public (Pulitzer Centre, 2011). Despite the legal backing, many gays and lesbians say the religious aspect of Nepal that dictates the country's social life makes it hard for them to come out to their families.

Appointment of a Gay, as a CA member stimulated mixed opinion among people; some support in favor of the decision whereas some opposed the idea. People of supporter believe it a unique step to their recognitions and other believed it destroy the social values and culture. There seems a kind of demarcation between old and new generation. However, after the appointment in CA member, Gay community's had easy access to all State agencies, political parties, ministers, and the Prime Minister as well which supports them to gear up their movement in Nepal. Politicians are open to LGBTI for the membership and include the concerns of sexual minorities in their political manifestos (BDS, 2010). From the following scenario we can assume that the unreceptive and hostile environment towards LGBTI changed gradually into neutral among civil society members, academia, media persons, government officials and rest of the general people.

Several sources are reporting that same- sex marriage and protection for sexual minorities included in the draft of the Nepalese Constitution (Hindustan Times, 2010).

The proposed draft report of 'Constitutional Committee on Fundamental Rights and Directive Principles, 2066 explicitly mentions in its article 3, sections 1,2,3,4 and 5 that there shall be no discrimination against any citizen in the application of general laws on the ground of *gender and sexual orientation*. Nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of gender and sexual minority. Similarly, no discrimination with regard to remuneration and social security on the basis of gender and all family members without any gender discrimination shall have equal rights to ancestral property.

Civil society organizations actually represent the people's organization which is established for non-profit, voluntary base organization and always stands for the interest of common people. Non-governmental organization, to some extent, is supposed to be the synonyms of civil society organization. Every day in every part of the world, civil society contributes to the promotion, protection and advancement of human rights. Whatever they call themselves -- human rights defenders, human rights NGOs, student clubs, trade unions, university institutes, or charities working with discriminated groups -- civil society actors work for a better future and share the common goals of justice, equality, and human dignity (OHCHR, 2012). Similarly, human rights indicate the rights relating to life, liberty and happiness. Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because of human being. The practice of human rights depends on the awareness of civil society actors. Only a dynamic, educated and independent civil society member can operate freely over the issues of discrimination and injustice in society. State presence in every place is practically impossible in the developing countries. In such a situation, civil society actors or local peoples are responsible to settle the disputes in local level. If people are uneducated, biased and occupied with traditional mindset then there may be high chances to get injustice from these actors so use of human rights depends on people's education, awareness and attitude.

### **1.2 Statement of problems:**

Talking about sex and sexuality is a kind of taboo in Nepalese society. Due to the social stigma and prejudice against homosexuality neither the community member would like to talk with researchers nor do they try to explore their human rights violation. Most of the time they try to hide their sexuality and remain silent on the

issues. A person of homosexual identification is practically difficult due to its hidden nature and absence of accurate data. Social stigma, illegal status, discrimination and exclusion limit the information about homosexuality. The lack of visibility makes difficult to the researchers to find out the real victim out of their population and to analyze the gravity of the suffering which they are facing in their everyday life. Furthermore, hidden nature of their activities makes difficult to provide justice as well.

Homosexual person is found in all part of the Nepal. Most of them are illiterate, economically very back and poor in health and marginalized in terms of access to education, health, and employment. People of same-sex orientation have been boycotted from family and the society as a whole and discriminated at the workplace constantly. They are either not given a job or fired even they are eminently qualified for the post if their sexuality is known. They face enormous peer pressure to confirm to hetro-normative standards if s/he would like to get promotion or other facilities. Muluki Ain, 1962 of Nepal and many other laws were amended for the equality purpose but this amended in legal provisions were not sufficient to change the situation of homosexuality. Still, people of the same sex community are suffering from human rights violation and deprived to get justice form police administration. Although, state guarantees of right to equality, access of homosexual to enjoyment of their rights is far behind than other gender minority's people.

Throughout the world LGBTI community people are the target of human rights violations. They are killed, tortured, raped and sexually assaulted simply because of their sexual orientation or gender identity (Flaherty & Fisher 2008). Additionally, their rights to freedom of expression and assembly are frequently denied. They often face violence as well as public harassment perpetuated by government and non-state actors. Penalties include prolonged jail sentences, torture, and forced psychiatric treatment. Only 53 countries have anti-discrimination laws that apply to sexuality and 26 countries recognize same-sex unions whereas 75 countries will imprison if someone is gay (Dugan, 2010). Although, the duty of government is to respect and protect the rights, ensure freedom from discrimination, apply the principles of equality and social justice for every citizen without any discrimination but the situation is not as what is believed in national and international human rights frame work.

### **1.3 Objective of the study:**

This study focuses on the perception of civil society towards homosexual and their human rights situation in Kathmandu valley. I have chosen human rights related NGOs for this dissertation as a representative of civil society organization and to analyze the human rights situation. While going thoroughly the definition of civil society organization, I know that NGOs related to human rights are very much close to the organization of civil society member.

The major two objectives of the research are as following:

- ) To find out the human rights situation of Lesbian and Gay.
- ) To find out the perception of civil societies towards the Lesbian and Gay.

I designed the research questionnaires and interview questions according to meet those objectives. I developed different indicators to get the required information to tally the human rights situation of homosexual community for example, question regarding to access to resource (parental property, health services, education) and access to public presence. Similarly, experience of coming out, status of coming out, family response on coming out are analyzed to find out the human rights situation of the community. Furthermore, to analyze the people's perception towards homosexuality, I put forwarded the question like how would they like to define homosexuality (normal, abnormal and diseased). Likewise, the question related to appropriate provisions for homosexual (allowing living together, right to marry, restriction to the homosexual movement and present situation). Furthermore, I analyzed the discriminatory practices along with applicable to the provision of special rights in regards to homosexual people were also analyzed.

### **1.4 Rationale of the study:**

Same-sex community is considered as one of the vulnerable community of Nepal. On the basis of sexual orientation people have been subjected to discrimination, deprived from opportunities and have not been able to enjoy human rights, including economic, social and cultural rights. Government policies and the Interim Constitution, 2007 of Nepal seem silent on the issues of the homosexuality. The ordinance to make public services inclusive does not include reservations for lesbian and gay. Also these communities have not been included in the tenth plan and the poverty alleviation

program of the government. Representation of homosexual in government offices, the judicial sectors, Commissions and local agencies is nearly zero. There is no evidence of quotas being reserved for individuals belonging to homosexual in any governmental and non-governmental institutions yet. Since the lesbian and gay also fall under Dalits, Janajatis and come from background regions, they are doubly victimized. They have not been provided special reservation in the education, health and employment sectors by the government. They do not have access to the reservations provided to Dalits, Janajatis and background regions.

Actually, right to homosexuality is an emerging issue in Nepal. It is very difficult to get sufficient literatures about sex, sexuality and sexual orientation in the context of Nepal to study. There are only few research completed in homosexuality. Due to the subject of social stigma and hidden nature of their activities even some researchers are hesitated to choose the subject. That is why, hardly few researchers are attracted towards this sector which itself prove the rationality of the research. Some international literatures are available in the internet and bookshops but they are expensive.

People in general tend to think lesbian and gay are either suffering from medical "disorder" or religiously "cursed". So, the question of "visibility" is a challenge all over the world. The 'sodomy law' defines every non-reproductive sexual action as crime causes lesbian and gay face with discrimination and lead them to court. Till date, there has not been developed any legal mechanisms which explicitly avoid discrimination on the grounds of sexuality which also indicate the State's unwillingness to recognize same sex relation and ignore the rights of homosexual. Due to the circumstances, in most of the cases of human rights violations they are denied to receive complain from the state machinery or if registered, delayed to provide justice. Furthermore, the subject is still considered as an outlawed in society. People generally ignore the presence of LG and bullying them in public presence. SOGI issues in education and academy are either absolutely absent or receive inadequate representation. I believe the research will be fruitful to explore new ideas for students and researchers about homosexuality and their human rights situation in Nepal.

### **1.5 Organization of the study:**

This dissertation is organized in seven different chapters with different dealings. The organization of this dissertation paper is presented as follows:

**Chapter One** explains introduction, background of LGBTIs situation along with a short scenario of development of the LGBTIS movement, status of same-sex community and challenges facing by them. Similarly, statements of the problem, objectives, rational of the study are included under this chapter.

**Chapter Two** deals on the topics of homosexuality and its status around the world along with the issues of coming out. It further deals the theoretical perspectives in relation to homosexuality especially hetero-normativity, Kinsey's theory, Feminist theory and Queer theory. Furthermore, it also deals about the rights based approach to homosexual issues.

**Chapter Three** deals the methodology of the research which includes the experience of difficulties while collecting information due to its hidden nature. Likewise, selection of the site and respondents, nature and sources of data, gaining access and building trust, sampling procedures and case studies are including in this section. Furthermore, semi-structural interview, focused group discussion and limitation of the study are including in this chapter.

**Chapter Four** deals the human rights status of homosexual in Nepal which was fully developed in the base of semi-structural interview, key informant interview, focused group discussion and questionnaire. It also deals the social status of homosexual community which includes the background of castes/ethnicity, age, marital status and level of education. To know the human rights status, the sub-topic 'access to resource' is included along with some points like access to parental property, health service, education and public presence. Furthermore, experience of coming out, homosexuality and reality and strategy to cope the situation is included in this chapter.

**Chapter Five** the main focus of the chapter is about the peoples' perception towards homosexuality so I try to draw some definitions of civil society in the introduction section. Further, a brief analysis of the socialization of Nepalese community and perception towards homosexuality along with data tables are mentioned in this chapter.

**Chapter Six** is about 'summary and conclusion'. It is concluding chapter and focused on analytical summary along with conclusion.

## Chapter-Two

### Literature review

Literature review was divided into three sections; the first section deal on the topics of sexuality, homosexuality and its status around the world along with the coming out issues of homosexual. The second section deals the theoretical perspectives especially hetero-normativity, Kinsey's theory, Feminist theory and Queer theory and the last section is about the rights based approach to homosexual issues. It talks about state obligations under national and international human rights mechanism and land mark decision in favor of homosexual person.

#### 2.1 Sexuality:

Historically, study of sex has been subject to public speculation, even attack upon, and their own sexuality. This has been in the case regardless of the sexual identity of the researcher, those who associate with a stigmatized individual acquire a 'courtesy stigma' (Irvine, 2003). Since the beginning of the modern homophile movement, gay people have made education of themselves and heterosexuals central to their political project (Mayo, 2007). Sociology has a long history of social theory and ethnographic research in the area of sexuality (Irvine, J.2003) and over the last decades it made significant contributions to the interdisciplinary study of sexuality.

Contemporary study of sexuality includes homosexual and queer theory along with as an analytic category rather than as an ascribed characteristic of sexuality. Despite a history of groundbreaking empirical research and critical theory, the study of sexuality has always been marginal within sociology itself (Irvine, 2003). French Philosopher and historian Micheal Foucault discussed in *History of Sexuality (1978)* that sexuality has been repressed by oppressive institutions (repressive hypothesis). His broad analyses of how power diffuse through institutions challenged the authority of science and medicine. According to Foucault, psychiatry defines what is norm and labels the different ones as mentally diseased, need to be cured. Homosexuality, in this sense, is an abnormal activity, a disease and psychiatrist is responsible to fix it using the authority given by science. Introducing historical sources on sexuality, from Ancient Greek and Middle Ages, Foucault also relates denaturalization of the term homosexuality to defining it with modernism (Ertetik, 2010). In the 1950s and 1960s, researchers combined theoretical perspectives such as Herbert Blumer's

symbolic interactionism with ethnographic methods to investigate topics such as homosexuality, prostitution, nudism, stripping and premarital sex (Irvine, 2003).

### **2.1.1 Homosexuality:**

Karl Maria Kertbeny, a German-Hungarian journalist, in 1868, coined the word homosexuality and homosexual to describe sexual relations between individuals of the same sex (Homosexual Studies and Politics in the 19th Century, 1990). Magnus Hirschfeld wrote for the homosexuality: “deep, inner-constituted natural instinct” and as a gender stage between the extremes of masculinity and femininity (Adam, D.1995). During the Nazi invasion of Germany and Europe, gays and lesbians organization were banned in the name of purification of the German society. Hitler banned all gay and lesbian organizations on January 30, 1933. Between 1933 and 1945 an estimated 100,000 men were arrested as homosexuals, of whom some 50,000 were officially sentenced (United States Holocaust Memorial Museum). Countries where Nazi effect was not so strong, homosexuality seemed as a disease and needed to be cured. The most important effect of holocaust upon the movement was extermination of the early gay culture and overspread the perception of homosexuality as sickness, sin or crime.

After Second World War, a project occurred against homosexuals by Joseph McCarthy, in US. The government, official language and the media attacked homosexuality (Rise of the New McCarthyism). After Communists, homosexuals were the main target of McCarthy’s four-year smear campaign (Where are we now, 2010). They spread a perception that gays and lesbians are perverts and same-sex relation is a psychiatric disease which threatens the society. Following these ideas, gay and lesbian individuals assaulted, dismissed from the school or work, obliged to remove their houses. Some of them enforced to get cured with some treatments like electroshock, thousands of others imprisoned in jails and mental hospitals. Before 1973, LGBT people were considered to be mentally diseased, sick or ill. But history would be made in 1973, when the American Psychiatric Association (APA) removed homosexuality from its lists of mental diseases. The decision carries historical value to abolish the misconception about LGBT and respect their dignified life with establishing the fact that they are natural human being.

The Stonewall rebellion was a defining moment in the history of homosexuality. It was happened when police raid on the Stonewall Inn in New York, USA on the night of June 27, 1969. Since 1970, the Stonewall uprising has been celebrated with an annual gay pride march (The New York Times, 2009). Before Stonewall riots, LGBT people were living in ghetto area under the extreme suppression of police and indirectly the state. The Stonewall Movement, 1969, was supposed to be a noteworthy event in the history of homosexuality and it was believed the inspiration to be united.

### **2.1.2 Homosexuality and third- gender issues in Nepal:**

Boycotting from own house, ancestral property and rented flat are common problem of homosexual communities when their sexuality is public in Nepal. Although, In December, 2007 the Supreme Court of Nepal made a historic decision ordering the Government to recognize LGBTIs as third gender according to their gender identity. The draft fundamental rights chapter of the constitution includes LGBTI rights but draft civil and criminal codes are extremely regressive and threaten to negate constitutional guarantees (HRW, 2012). According to local NGOs Nepal has 280 discriminatory legal provisions affecting the LGBT community (HRW, 2012). Institutional and personal unfriendliness toward lesbians and gay is a fact of life in the Nepalese society today. Despite widespread antipathy toward same-sex communities in Nepalese civil society, however, the research data indicate a growing willingness to grant basic human rights to homosexual community. Same-sex marriages are not legal in Nepal, but the country is drafting laws to guarantee sexual rights (BBC News, 2011). It has been estimated that there are some two million homosexuals and third genders in Nepal. Roughly 134,000 are registered as third gender in 40 districts offices across the country (Shrestha, 2012).

According to the research conducted by CREA, (2012) in regards to 'coming out question' out of 81 respondents more than half reported that they had come out to their lesbian friends (58%). While, about a fifth had come out to their other female friends (22%) and family members (22%). About a third of the lesbian women reported that they had faced violence when they disclosed their sexual orientation (31%). Most of them reported that they had face violence from their family members (68%), while a smaller number had faced violence from their friends (16%) and their partner's family and neighbors (8%). Majority of homosexual people constantly face exclusion from society.

While reviewing on local newspaper, it was noticed that police often took homosexual member in custody without having sufficient misdeed proofs and keeps them in suspicious list. This type of degrading treatment of the state, they are discouraged to register their complained against perpetrator. By the way, if they were able to register the case in police stations either they are denied to justice or they are compelled to sign in mediation paper which is always in favor of amnesty to perpetrator. Social exclusion is the root cause of discrimination and human rights violation of the homosexual person. Exclusion also limited their access in opportunity over education, health care, housing and basic needs etc. Due to lack of awareness about same-sex sexual orientation people hardly could understand the diversity of sexuality. Based on the ideology, LGBTIs people are given the position of second-class citizens with regard to various legal and civil rights, economic opportunities, and social equality in the majority of the world's jurisdictions and societies (The Titi Tudorancea Bulletin, 2010). Most of the respondents commonly agreed that in comparison to gay, lesbian are always harassed verbally using slang words in public places like parks, social gatherings, transportation etc. in the city which is always embarrassing.

However, sexual minorities' communities are more optimistic and never lose hope in building an inclusive society where any individuals from whatever background can have an equal space in this society. In spite of all those efforts, there is still difficult to disclose oneself as a lesbian and gay in the community. It is still a matter of concern and risks to homosexual being isolated and discriminated against, if their sexual orientation is disclosed in society. While observing the social relationships in homosexual they were found to be socially and emotionally distant from their family and relatives. Most of the lesbian respondents stated that they rarely go their own home for fear of being forced to get married, which often results in a dispute among family members.

**Third-gender:** LGBTI community of Nepal would like to say themselves a 'third gender' and demanding citizenship according to their physical status. In general majority of the Nepalese civil society believe that individual who does not identify themselves with traditional notions of gender i.e. male and female are called third gender. The term "third gender" has been used in the country to refer to gay men, lesbians, and bisexual and transgender people (Pink News, 2008). A 21 years old female to male trans gender, Bishnu Adhikary, become the first person in Nepal to be

officially recognized as a third gender person. She was issued an official identity card on 17 September 2008 described her sex as “ third gender” instead of the male and female (Jha, 2008).

Government of Nepal, recently made public notice on Gazette (*Nepal Rajpatra*) on 21 June 2012 and instructed to DAO to provide citizenship to third gender mentioning 'other' as gender option along with 'male' and 'female' (Kantipur, National Daily, 2012). Activists and government officials have agreed that the term “other” (anya) will be used to represent this category on official documents (Bochenek& Knight, 2012). But, if we analyze the case of Chanda Musalman and Badri Pun, both of them were born biologically female, State authority seems confused while in the process of distributing the citizenship to the LGBTIs members as a third-gender for example in the case of Chanda Musalman (Feb-2007) was issued citizenship certificate mentioning the gender “both” and in the case of Badri Pun (April - 2011) issued third-gender in place of male and female (My Republica, 2010).

The straight definition of the term third gender or third sex is the individuals who represent the characters of neither men nor women or both. It's the state of being neither male nor female and should be understood in relation to the individual's biological sex. Further, the third sex may represent the state of being both-like the spirit of a man in the body of woman and vice-versa (Shrestha, 2012). The third gender in Nepal is an identity-based category for people who do not identify as male or female. This can include people who perform or present as a gender role other than that which was assigned to them at birth based on genitalia or other criteria, or people who do not feel the male or female gender roles that their culture dictates match their social, sexual, or gender role identity. Like men and women, third gender people can also identify as a range of sexual orientations. The emergence of the third gender category as reflected through its implementation indicates it is broader than a simple combination of intersex and transgender categories.

History has no profound ground to prove as to when the third sex came into existence in society. Views differed from writers to writers. Some writers suggest that a third gender emerged around 1700 AD in England. Karl Heinrich Ulrichs's book proves that people described themselves as members of a third sex in Europe around 1860s. Many cited precedents from classical Greek and Sanskrit literature (Shrestha, 2012). India has used a third gender category in several administrative capacities. In 2005,

India's third gender citizens could start registering for passports as eunuch, denoted by an "E." In 2009, an "E" designation was added to voter registration documents. And in 2011, the Unique Identification Authority of India, administering a new government citizen ID number system, allowed "transgender" as a third gender option (Bochenek & Knight, 2012).

In western countries they assume only two sex male and female so if a person found his or her orientation is different than their body, they have facility to change their sexual organs. Famous comedy actors of Nepal Santosh Pant's youngest son Pratik Pant (now Caitlin Pant) has undergone a sex change surgery in Bangkok and identified as a female instead of becoming the third gender (Saptahik, Kantipur Publication, 2011). Caitlin interview raised great discourse in the history of LGBTI movement in Nepal. People raised question about the sincerity of demanding third gender identity? From the feminist perspectives also it is not good to categories gender 'first', 'second' and 'third' because it established the hierarchy between male and female. The ranking system like first, second and third raised a genuine moral question, who is the first gender? Why they are supposed to be first gender and others are second or third gender?

### **2.1.3 Coming out of homosexual person:**

Coming out is a life-long process. It means to tell one's sexual orientation to the other person or people. During the process LGBTIs face lots of plights in their life, they get lots of threats to death. The term "Come out" comes from the idiom "to come out of the closet," which implies breaking a state of secrecy, privacy or obscurity or to admit something openly (Jacobson & Jansson, 2007). A family may experience a sense of panic following the coming out of gay, lesbian, bisexual or transgender (GLBT) family member. Self-disclosure of an identity that carries an awful social stigma can lead to discrimination even from one's own family (Chaudoir & Fisher, 2010). Initial stages of the coming out process homosexual get mount pressure, unbearable torture and degrading treatment from their family and relatives. Due to fear of family, relatives and society they could hardly open their sexual orientation. Family and relatives frequently threatens to boycott from house and ancestral property if s/he publicly open their sexual orientation. According to Northern Illinois University (NIU) Ally Program Volunteer Handbook, developed by the NIU, LGBT Resource Centre "Coming out is the process of recognizing, accepting and sharing

with others one's sexual and / or gender identity. It further explains that 'coming out' is not a single event, but a lifelong process, which may begin at any age.

There are many stages in the coming out process, and the process is not exactly the same for every person. Coming out can be very long and difficult because it involves not only confronting the constant assumption that one is heterosexual and / or that one's gender identity is based on one's sex, but also facing fears of or actual rejections by others, homophobic attitudes, restrictive gender norms, and discriminatory practices along the way. Following the typical grief responses of anger, hurt, anxiety and loneliness, a family may find it difficult to accept the new identity of their loved one (Duffey, T. 2006). Family control their movement and activities thinking that their orientation would change gradually but due to the cause of restriction a kind of rebellion thought emerged in their mind and determine to take the risk to public their sexual orientation. Often, the individual has been experiencing so much anxiety, shame, and guilt for hiding their true identity that they reach a breaking point, and no longer want to hide (Butler, 2009).

There's a thin line between comings out process, some like to come out only to close friends where as other likes to public. Coming out to public can be considered as participating in a protest march (anti-homophobia walk, May day etc), publishing an article in magazine or website and further working in an association. Furthermore, the term 'coming out' indicate the both a rejection to the existing social customs, norms, values and also to the domination of patriarchy. Coming out have three phases in general; the first is one's discovering own identity, called internal coming out. Second is deciding to come out to others, family, friend, colleagues...and so on. The third phase is one's becoming openly living LGBTI person (Ertetik, 2010).

#### **2.1.4 Homosexuality around the world:**

**Europe:** Northern European countries were the first to recognize same-sex unions which trend was spread all over the world in the 1990s. In 1989, Denmark became the first country to institute legislation granting registered same-sex partners the same rights as married couples. Norway, Sweden and Iceland all enacted similar legislation in 1996 and Finland followed suit six years later. Netherland become the first country to offer full civil marriage rights to gay couples in 2001. Belgium and Spain allowed gay marriage in 2003 and 2005 respectively. Germany has allowed same-sex couples

to register for “life partnership” since 2001. France in 1999 introduced a civil contract called the Pacs, which gives some rights to cohabiting couples, regardless of sex. In Britain, legislation came into force in December 2005 giving same-sex couples in registered partnership similar rights to married couples, in areas such as pensions, property, social security, and housing.

**America:** President Barack Obama’s announcement for supports the same-sex marriage has set off a new round of debate in the U.S. (CNN World, 2012). In 2000, Vermont become the first US state to offer homosexuals the right to join in civil unions, giving them the same benefits as married couples on matters such as life insurance, health care and child custody. In April 2005, Connecticut become the second US state to allow same-sex civil unions but it specifically defined marriage as being the union of a man and a woman. San Francisco started issuing marriage license in March 2005. Massachusetts became the first state to issue marriage licenses for gay couples in May 2004. State legislators have proposed a constitutional amendment that would ban gay marriage, but would allow civil unions. In July 2005, a bill to legalize same-sex marriage became law in Canada. Gay marriage was already legal in eight of 10 provinces and one of Canada's three territories. In Argentina, July 2003, the first gay civil union took place, giving legal rights similar to those for heterosexual couples, but excluding adoption and inheritance rights. Argentina is the first country in Latin America to allow such unions.

**Australia:** In Australia same-sex couples are not permitted to legally marry. A bill of gay marriage was submitted to parliament but it was overwhelmingly rejected by Australian Parliament on 19 September 2012. Even the Prime Minister Julia Gillard was also voted against the bill (BBC news, 2012). In December, 2004, New Zealand's parliament passed controversial legislation to recognize civil unions between gay couples.

**Asia:** In Asia, few countries are opening some space for homosexuals in society. The debate about sexuality is included in democracy, equality and human rights. The rising visibility of homosexual in the Asia can be measured as one of many social changes that have been accelerated by urbanization, modernization and democratization. Homosexuality is illegal in many South Asian countries, including Bangladesh and Pakistan where those convicted can face life imprisonment (BBC News, 2012). In India, a broad campaign is underway to repeal Section 377 of the

Indian Penal Code, which criminalizes 'sexual activity against the order of nature'. The campaign succeeded in having the section read down to decriminalize same-sex behavior between consenting adults in a historic judgment by the Delhi High Court in July 2009 (CREA, 2012). Immediately, religious group and other like-minded people filed petitions to the Supreme Court to reverse the High Court order. There is a culture of collective denial on the existence of same-sex sexualities in Bangladesh, perhaps linked to Islamic religious sentiment, effectively stifling any public debate about same-sex sexualities in the country (CREA, 2012). Nepal's transformation in rights and recognition of LGBTI along with decision of Supreme Court, 2007 well praised in the history of Asia and similar changes are taking place elsewhere in Asia. In India, the Delhi High Court recently struck down as unconstitutional a 149-year-old law criminalizing homosexuality, in a judgment so eloquent in its support of gay people's right to dignity. In China, Beijing and Shanghai hosted gay and lesbian festivals with little official interference-an achievement in a country where mass gatherings of any kind are tightly controlled (Times Magazine, 2009).

Across East Asia, laws criminalizing homosexuality exist in Burma, Malaysia, Singapore and Brunei. But in Taiwan and Indonesia homosexual are being assisted by more open societies following political change and the gay scenes are flourishing. Even in Malaysia, despite the spread of Islamic conservatism, there is growing recognition of the existence of gay and lesbian (BBC News 2000).

**Africa:** In December 2005 South Africa's high court instructed parliament to amend marriage laws to include same-sex unions within a year. South Africa may be the first country which has incorporated the provision of non-discrimination on the ground of sexual orientation in the 'Bill of Rights' of its constitution. Under the provision of right to equality, Article 9 (3)<sup>2</sup> reads as follows: the state may not unfairly discriminate directly or indirectly against any one on one or more grounds including sexual orientation.

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<sup>2</sup> Under the provision of right to equality, the Sub Article (3) of Article 9 of the constitution of South-Africa adopted the provision of non-discrimination on the ground of sexual orientation in the 'Bill of Rights' of its constitution on 8 May 1996, amended on 11 October 1996 and came into effect from 7 February 1997 reads as follows - Article 9 (3) : The state may not unfairly discriminate directly or indirectly against any one on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

To sum up, same sex relations are still criminalized in 76 countries, and death penalty can be applied in five countries. They are Iran, Saudi Arabia, Yemen, Mauritania and Sudan (ILGA, 2011). The full list where the same-sex marriage is legal (and year the law passed):

• Argentina – 2010	J Iceland – 2010	J Portugal – 2010
• Belgium – 2003	J Netherland – 2001	J South Africa – 2006
• Brazil – 2011	J Norway – 2008	J Spain – 2005
• Canada – 2005		J Sweden – 2009

Source: BBC News, 2012

## **2.2 Theoretical perspectives on homosexuality:**

Theoretical perspective is very important while conducting any sociological research. It will not only give a conceptual clarity over the subject matter but also guide us towards logical end of the research. According to sociologist F.N. Kerlinger, (1973) ‘Theory is a set of interrelated concepts, definition and proposition that present a systematic view of phenomena by specifying relations among variables with the purpose of explaining and predicting the phenomena’ (Devkota, 2009). Sociological perspective helps us assess the truth of common sense assumptions and empower us to recognize human variety and confront the challenges of living in a diverse world. Furthermore, it will also help us to think globally and act locally. That is why I present some theoretical perspectives which are related to the subject matter. Actually, the thesis is written under the gender perspectives. Actually, gender perspective looks at the impact of gender on people's opportunities, social roles and interactions. Successful implementation of the policy and programme of international and national organizations is directly affected by the impact of gender and, in turn, influences the process of social development.

### **2.2.1 Hetero-normativity:**

The concept of heteronormativity is relatively new (Butler, 1999). It focuses on heterosexuality as a normative notion that repeatedly asserts heterosexual life as the right life to live (Martinsson et. al. 2007). Heteronormativity is a term means

imposing heterosexual patterns for everybody. It assumes that emotional and sexual relationship can only occur between people from opposite sexes and other ways are abnormal. Generally, norm indicates the concept that shows how representations and language, ways to understand and make sense of things, events, and situations, are connected to power. Norms tell us how to behave, how to act; it makes our lives intelligible (Martinsson et. al. 2007). Heterosexuality is taken for granted that it is often not regarded as a sexual orientation. It represents what is normal, predetermined and expected. This perception is so dominant that it is the governing norm – the heteronorm. Any other sexual orientation is, thus, considered abnormal and foreign (Jacobson & Jansson, 2007). The norm prescribes women and men to act, think, and perceive themselves as the opposite of the other sex. A man is what a woman is not, and vice versa. Furthermore, the definition of each sex entails that individuals who are named "women" should desire a "men" and individuals who are named "men" should desire a "women". These gender categories, together with their prescriptions of how to behave and what to desire is a normative construction, a heteronormative construction. Judith Butler defines the concept of a norm in the following way: "A norm is a form of social power that makes subjectivity, it makes it possible to act, it makes you act in an intelligible way" (2004). This means that people who do not act in accordance with the norm are not intelligible; they will appear as queer, excluded, different, and strange.

While talking about sexuality I am referring to sexualizing norms, that is, representation, notions, and modes of behavior that make us feel and understand, act and organize our lives, genders, and societies in specific ways. Norms can be experienced everywhere in every levels, it is deeply constructed in our lexical mind and repeated in workplace and within organization. Nobody can escape this being part of how norms are made and subverted; we all take part in this process by the way we dress, talk, shop, and behave. It is due to this construction and repetition in different contexts that the norm seems so stable and appears as an expression of something natural and self-evident.

### **2.2.2 Alfred Kinsey's theory:**

Alfred Kinsey et al.(1948,1953) the pioneers on research on human sexuality, were the first to conceptualize sexual orientation comprising of sexual behavior and erotic fantasy as falling on a seven-point continuum from exclusively heterosexual-

homosexual continuum challenged the earlier dichotomous either/ or view of sexual orientation. The middle points (scores 2, 3, 4) in the scale represented bisexuality (Joseph, S. 2005). Kinsey was among the first scientists to conduct large – scale scientific inquiries into human sexuality (NNDB, 2012). He wrote two books on human sexual behavior, *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953). The Heterosexual- Homosexual Rating Scale sometime referred to as the "Kinsey Scale" was developed by Alfred Kinsey and his colleagues Wardell Pomeroy and Clyde Martin in 1948, in order to account for research findings that showed people did not fit into neat and exclusive heterosexual or homosexual categories<sup>3</sup>.

Kinsey writes in *Sexual Behaviour in the Human Male*, 1948, that "Male does not represent two discrete populations, heterosexual and homosexual. The word is not to be divided in to sheep and goats... The living world is a continuum in each and every one of its aspects." Similarly in his another book *Sexual Behaviour of the Human Female*, 1953, the authors add while emphasizing the continuity of the gradations between exclusively heterosexual and exclusively homosexual histories, it has seemed desirable to develop some sort of classification which could be based on the relative amounts of heterosexual and homosexual experience or response in each history [...]. An individual may be assigned a position on this scale, for each period in his life. [...] A seven-point scale comes nearer to showing the many gradations that actually exist (Kinsey, et al. 1948).

### **2.2.3 Feminist theory:**

What gender is, what man and women are, what sorts of relations do or should obtain between them – all of these notions do not simply reflect or elaborate upon biological "given" but are largely product of social and cultural process (Ortner, et al 1981). Gender and sexuality are both social constructs. They are closely intertwined; both are about values and meanings, and both are concerned with norms that permit and constrain certain forms of social and sexual expression. In every society, girls and boys grow up learning that differences between their bodies mean differences in how they are praised and criticized for, and what they are allowed and not allowed to do.

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<sup>3</sup> (The Kinsey Institute, for Research in Sex, Gender, and Reproduction).

At one time it is widely believed that social "gender" was simply mapped onto biological "sex" (Runeborg, 2008). Now we know that matters are more complex that women and men are encouraged to modify their bodies to accentuate gender differences and make themselves fit accepted ideas about what is sexually attractive or appropriate.

Lesbian and Bisexual women often face a double layer of discrimination based on their sexual orientation and gender. They are frequent targets of rape or other forms of sexual violence. Since many of these attacks occur in homes or private settings, the violations are not well documented compared to those against heterosexual women. As a result, often the experiences of lesbian and bisexual women receive less attention. Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms (The Yogyakarta Principles).

It is widely assumed that concept of family and division of labors restricts women's movement in public sphere and compelled them to survive in household boundaries. In the course of history time and again women were united and raised their voice against the so called division of labor. Since it could not be able to bring any remarkable changed in society and being frustrated some women preferred to live single. Although, it does not have direct connection to lesbianism but it came to be a supporting situation for same sex movement. Radical feminists reject a world where men control women's bodies and force women into motherhood or sexual slavery. They, therefore, harshly blame men as the oppressors of women and hold that all violence against women, rape, sexual harassment or any form of degrading and inhuman treatment. Radical feminists consider family as a main problem of women. But distinctly; unpaid domestic labor, reproduction, sexual and physical violence are part of the patriarchal system. Thus radical feminists make patriarchy problematic and try to show how it embodied every field of our lives (Hines, S. 2008). Actually, they are searching the alternate or substitute of men in their life and lesbianism is a perfect example for them. If we deeply analyze the intention of the radical female then we reached very close to the situation of lesbian.

Engel's in his book entitled, *The Origin of the Family, Private Property and the State* 1884, outlines the genesis of sexual inequality in society. According to Engels, the

strong desire for man's supremacy in the family, the subjugation and the resultant "enslavement" of the female sex among others. Furthermore, Engel's opines that equality between the sexes can only be achieved in a socialist society when the forces of production are commonly owned. Perception and interpretation of the world was only one sided before feminism; from men's perspective. All the developments in the science took place without voice and experience of women, thus the only knowledge we can reach is masculine. 'His-story' is even written by men. Women aimed to change their subordinated position by resisting against men's domination (Ertetik, 2010). Marxism had left its impact in marriage also. It becomes the matter of pride in capitalism. Person need to afford more money for marriage ceremony otherwise their prestige will down. People who have money can hold more women but in contrast it is very difficult to get even one woman for life partner due to poorness. Marriage becoming expensive day by day and very few people afford such a great amount of money for marriage. Having no money, most of the youth are compelled to marriage in late age and even lead a single life. Similarly, it is supposed that hundreds of marriage met divorce by the cause of money. So, in the present scenario, Marxism indirectly encouraged people towards same sex orientation.

#### **2.2.4 Queer theory:**

A word that was once commonly understood to mean "strange", "odd", "unusual", "abnormal", or "sick" and was routinely applied to lesbians and gay man as a term of abuse (Halperin, 1997). Queer is a slang used for insult homosexual. The word queer means weird, bizarre and was first used for insulting homosexuals in 20th century. The term was embraced by gay lesbian movement and lost out its negative meaning over time. From 1980's to present, 'queer' refers to people who reject to live within the heteronormative forms. The main aspect of Queer theory is to examine the base of identity construction within the cultural realm and resist against this construction.

According to Queer Theory, the definitions of gay, lesbian, bisexual and transgender is irrelevant, because these terms are fluid and changeable in person's lifetime. Also naming the identities limits sexuality and puts individuals in a frame, that no one can fit in completely. Poststructuralists question the emergence of the concepts like 'truth' or 'power' and argue that there are particular forms of knowledge, rather objective and universal truths or meanings (Sullivan, 2003). Queer Theory has emerged with the influence of poststructuralist and postmodernist approaches, especially with the

works of Foucault and Derrida. Foucault's works on sexuality accepted as the pioneer of Queer Theory and Derrida's terms difference and deconstruction opened to discussion the main points of gender issue. Displaying disguised hierarchical relations and power dispersed all fields of our lives, Foucault analyses the structure. In the *History of Sexuality*, he discussed sexuality has been repressed by oppressive institutions (repressive hypothesis).

At the beginning of the Queer Movement, gay and lesbians defined themselves as third sex and their actions were aiming to have rights which heterosexuals had. The idea was to show the similarities between both sides and meet at the civil rights. Contribution of feminist theories to the movement is reconsidering the gender roles, subordination and the system itself. The movement abandoned to fight for liberation, started to fight for structure of the society.

### **2.3 Rights based approach to homosexual issues:**

Human rights framework has been widely adopted in debates to gain equality for lesbians and gay men. The aim of the human rights based approach (HRBA) to homosexual was to explore the extent to which rights-based arguments are employed when talking about lesbian and gay issues in a social context. HRBA to lesbian and gay issues takes as its starting point the fundamental principle that human rights are universal and inalienable comprising first and foremost the rights to life and secondary any rights which maintain the existence and quality of that life (e.g. civil and political rights) for all people regardless of class, race, sex, sexual orientation, religion and disability (Donnelly, 1993). Consequently, whether or not embodied in laws, treaties and declarations, human rights apply to all people, including lesbian and gay. By locating sexual orientation within a human rights framework, lesbian and gay men (and their advocates) can link their struggle to a tradition which has transformed the oppression of other groups (e.g. women and blacks) into rights respected under domestic and international law (Helfer & Miller, 1996). Other moral frameworks, however, make it difficult to achieve equality for lesbians and gay men because they construct sexual orientation as 'private practice', rather than 'public identity' and therefore not as a social and legal issues (Sonja, 2004). Furthermore, since human rights apply to all people, independent of individual difference (e.g. race, class, sex, sexual orientation, and religion) (Donnelly, 1993).

The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights (UDHR, 1948) which states that “all human being are born free and equal in dignity and rights”. International human rights law protects all persons equally, without any discrimination to equal protection of law (Article, 7 of UDHR, 1948). The broad range of human rights should be equally enjoyed and accessible to all groups of individuals, be it- civil, political, economic, socio-cultural and sexual. The [Yogyakarta Principles](#) on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, developed in 2006 by a group of LGBT experts in Yogyakarta, Indonesia in response to well-known examples of abuse, provides a universal guide to applying international human rights law to violations experienced by LGBT to ensure the universal reach of human rights protections. The protection of the basic rights of LGBT and other vulnerable groups is, therefore, grounded in a human rights framework that all people are worthy of equal respect and dignity whatever their situation. Amnesty International believes that all people, regardless of their sexual orientation or gender identity, should be able to enjoy their human rights<sup>4</sup>. However, across the globe, there remain many instances where an individuals' sexual orientation or gender identity can lead them to face execution, imprisonment, torture, violence or discrimination. The range of abuse is limitless and it contravenes the fundamental tenets of international human rights law.

### **2.3.1 State obligation under national human rights framework:**

#### **) Gazette ( *Nepal Rajpatra*) on 21 June 2012:**

Government of Nepal instructed District Administrative Office through Gazette paper on 21 June 2012, to provide citizenship to third gender mentioning 'other' as gender option along with 'male' and 'female' (Kantipur, National Daily, 2012).

#### **) Interim Constitution of Nepal, 2007:**

Interim Constitution of Nepal, 2007 secures the rights to be equal before the law. Thus eradication of all form of discrimination is essential to full enjoyment of the fundamental rights. The word 'person' has been used instead of 'men' and 'women' in the Article 13 of our Interim Constitution, 2007. It keeps great importance towards LGBTIs, because of the clause of constitution one need not to be a male or female to

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<sup>4</sup> (<http://www.amnestyusa.org/our-work/issues/lgbt-rights/about-lgbt-human-rights>)

get constitutional remedy, anyone regardless of their sexual orientation are eligible to get equal protection of law. But, the constitution is silent about homosexuality.

) **Supreme Court directive order, 2007:**

On December 21, 2007 the Supreme Court of Nepal issued the directive order to the state to identify the lesbian, gay, bisexual, transsexual and inter-sex people and recognize them as a marginalized group. It further state to respect their dignified life as per their gender recognition with the issuance of third gender citizenship identity and conduct a research to figure out what kind of practices and jurisprudence has been developed in South Asian Association for Regional Cooperation (SAARC) Countries and at global level and recommend the government of Nepal accordingly to same sex marriage. The seven-member committee has formed to conduct the above mentioned research and the committee is in phase of preparing its reports after studying same-sex marriage bills in other countries.

**2.3.2 State obligation under international human rights framework:**

Nepal ratified 21 Human Rights related International Conventions, 11 related to International Labor Organization (ILO) Conventions and 4 Humanitarian Laws – Geneva Conventions (Human Rights Question – Answer Collection, 2009). Being a party to these international treaties and conventions, Nepal is obliged to implement these instruments in country level according to the Vienna Convention on International Treaties, 1969 and the Nepal Treaty Act, 1991. But, the implementation status in working level is very frustrating due to conventional notion of gender perception. Actually, the obligation of the States is supposed to prevent violence and discrimination based on sexual orientation and gender identity (SOGI).

Some international human rights provisions under state obligation irrespective of sexual orientation and gender identity are mentioned below:

) **Right to life, liberty and security of person:**

Under article 3 of the UDHR, 1948 “everyone has the right to life, liberty and security of person”. Article 6 of the ICCPR affirms that “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”.

) **To prevent torture and other cruel, inhuman or degrading treatment:**

The right to be free from torture and other cruel, inhuman or degrading treatment is absolute. Article 5 of the UDHR and article 7 of the ICCPR provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 2 (1) of the Convention against Torture stipulates that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

) **To protect individuals from discrimination:**

The right to be free from discrimination is included in the UDHR (art.2) and core international human rights treaties, including the International covenant on Economic, Social and Cultural Rights (art.2) and the Covenant on the Rights of Child (art.2). Article 26 of the ICCPR guarantees equality before law, requiring States to prohibit discrimination.

) **Right to freedom and expression, association and assembly:**

Freedom of expression, association and peaceful assembly are enshrined in the UDHR, article 19 and 20. Similarly, ICCPR article 19, 21 and 22. Under article 19 of the UDHR “everyone has the right to freedom of thought and expression; this rights includes freedom to hold opinions without interference and to seek receive and impart information and ideas”. Under article 20 (1), “everyone has the right to freedom of peaceful assembly and association.” ICCPR permits restriction of these rights, but only when provided by law and necessary to protect the rights (or, in the case of expression, reputation) of others or national security, public safety, public order or public health or morals.

### **2.3.3 Landmark decision around the world regarding LGBT issues:**

) **Toonen V Australia, 1994:**

It was a landmark [human rights](#) complaint brought before the [United Nations Human Rights Committee](#) (UNHRC) by [Tasmanian](#), resident Nicholas Toonen in 1994. In the case of Toonen V Australia, Human Rights Committee of the United Nations has condemned unequal treatment based on sexual orientation. Nicholas Toonen, an Australian citizen, a leading member of the Tasmanian Gay Law Reform Group (TGLRG) and claims to be a victim of violations by Australia of articles 2, paragraphs 1, 17 and 26 of the International Covenant on Civil and Political Rights. In the case of

Toonen v. Australia, the Human Rights Committee held that States are obligated to protect individuals from discrimination on the basis of their sexual orientation (Younic Tatha Laingaik Alpasankhyak, 2066).

Since Tonnen in 1994, Human Rights Committee has held that laws used to criminalize private, adult, consensual same-sex relation violates right to privacy and to non-discrimination. The committee has rejected the argument that crimilization may justified as 'reasonable' on grounds of protection of public health or morals (HR Council, 2011).

) **Lawrence et.al. v. Texas (2003):**

The Supreme Court of United States of America (USA) in the case of Lawrence et.al. v. Texas (2003) has declared a law unconstitutional which considered an act of sexual relation between the adult people of same sex was illegal and pronounced as a crime. It is also found that the Constitutional Court of Ecuador has also declared a provision of the national law that pronounced a homosexual relation as a crime, null and void. The court found this provision as contrary to the Section 516 of Criminal Code of the country as well as to the constitution and the Article 26 of the ICCPR and declared null in 1997(*Younic Tatha Laingaik Alpasankhyak, 2066*).

) **Van Kuck vs. Germany (2003):**

The applicant, Ms Van Kück, who lives in Berlin, was born male in 1948. She changed her first names to Carola Brenda in December 1991. The following year she sued a health-insurance company for reimbursement of the cost of hormone treatment and a declaration that the company was liable to reimburse 50% of the cost of gender re-assignment surgery. Her claim was rejected by the Regional Court on the ground that this could not reasonably be considered as necessary medical treatment: it had not been conclusively shown that it would relieve her condition and she should have tried extensive psychotherapy first. The Court of Appeal upheld that decision and added that Ms Van Kück was not entitled to reimbursement because she had caused the disease herself (Netherland Institute of Human Rights).

The case originated in an application (no. 35968/97) against the Federal Republic of Germany lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms by a German national, Ms Carola van Kück, on 6 May 1997. The case was

filed against the fair trial, privacy and discrimination with reference to insurance provision which does not take the responsibility of the surgical operation for sex change, the European Court of Human Rights has interpreted that "...the applicant's freedom to define herself as a female person, one of the most basic essentials of self-determination the very essence of the European Convention of Human Right being respect for human dignity and human freedom. Protection is given to the right of transsexual personal development and physical and moral security<sup>5</sup>."

### ) **Goodwin vs. United Kingdom and I vs. United Kingdom:**

In 2002, AD in two cases e.g. Goodwin vs. United Kingdom and I vs. United Kingdom when the UK denied to prepare the legal identity papers of an individual corresponding with the present sex after changing it through the surgical operation. The court has articulated that changes in their identity papers holding their right, to respect for their private lives and also their right to marry had been violated<sup>6</sup>.

### **2.4 Coping strategies:**

People have different reactions when they first begin to realize that they may be homosexual. Attraction to the same- sex or opposite sex begins to form between middle childhood and early adolescence (APA, 2008), and most LGBTQ individuals realize their sexual "otherness" at this time (Stewart, 2006). As children and adolescents begin to recognize their attractions, they also recognize the social stigma associated with their non-normative sexual orientation or gender identity. LG individuals usually try to deny or resist their sexual identity before accepting it and then disclosing it to others (Stewart, 2006). Finally, they are able to integrate their sexual identity into their whole selves. Some students manage to fully integrate their sexual identity at a young age and go through the developmental process of exploring relationships and intimacy (Stewart, 2006) at the same ages as their heterosexual peers. However, most LGBTQ teens take more time, and at each developmental stage, they must cope with their feelings of difference and social stigma (Stewart, 2006).

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<sup>5</sup> Case of van Kück v. Germany, THIRD SECTION CASE OF VAN KÜCK v. GERMANY (Application no. 35968/97) JUDGMENT STRASBOURG 12 June 2003 FINAL 12/09/2003 [www.dgti.org/index.php?option=com\\_content&view=article&id=91](http://www.dgti.org/index.php?option=com_content&view=article&id=91)

<sup>6</sup> ECHR press release in the case of Goodwin vs UK  
Press release issued by the Registrar GRAND CHAMBER JUDGMENT IN THE CASE OF CHRISTINE GOODWIN v. THE UNITED KINGDOM. The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Stewart (2006) argues that students use three ways to manage these feelings of difference: they try to change them, continue to hide them, or accept them. Some students recognize their own homosexual identity but choose to hide it from others (stay “in the closet”). Staying in the closet can have particularly negative effects on health and well-being (APA, 2008). Other students might try to alter their gender presentation and expression by wearing similar clothing like their straight friends and by not emphasizing their sexual orientation in conversations (McCready, 2004). Coming out also allows students to seek out others like them and helps students to see that they do not exist in isolation, which is beneficial for mental health (APA, 2008). However, being out is also associated with greater victimization because bullies are better able to target LGBTQ students who are out (Kosciw et al., 2010). Others take the opposite approach, trying to suppress any stereotypical behavior and even hide their identities by forming opposite-sex relationships (Kerr & Cohn, 2001; Peterson & Rischar, 2000).

## **Chapter-Three**

### **Research methodology**

Instead of drawing samples randomly from the complete population of the research location, I depend on the most accessible and reliable sources knowing them as homosexual population e.g. the BDS office a leading national non-governmental organization for advocating the rights of LGBTI in Nepal. My study includes those gays and lesbians who are involved in formal networks and living in and around the Kathmandu valley. The gay and lesbian who belong to the informal networks or loosely knit groups who met in public places like Ratna Parks, Thamel, Lainchaur and some other street corners are excluded from the purview of the study because of the inaccessibility to these closed networks. I briefly explain the methodology of the research remaining in the tools like selection of the site and the respondents, nature and sources of data, gaining access and trust building, sampling procedure. Furthermore, semi-structural interview, focused group discussion and case studies are applied to the research methodology.

#### **3.1 Introduction of research methodology:**

Due to the stigma and prejudice against homosexuality, a questionnaire was thought to provide a better response since it offered the subjects confidentiality. The questionnaire consisted of two sections. Most of the questions were close-ended with multiple options; a few were open ended. A total of 60 questionnaires, 30 for lesbian and 30 for gay were distributed. Most of the questions responded completely except some of them were partially completed. Among the 60 questions only 48 were collected; 26 from lesbian and 22 from gay members.

Similarly, 65 questions were distributed to civil society members where only 53 were collected. Respondents were from different caste groups. I stated the caste / ethnicity groups in a table so as to make the study easier. In some questions, data shows people's moderate attitude while choosing the one out of 3 options about the human rights issues of same sex community. Furthermore, in homosexual community, while applying snowball technique, in some of questions, I get similar types of responses which makes me little confused that whether there was possibility to bias due to common sexual orientation?

### **3.2 Selection of the site and the respondents:**

Blue Diamond Society (BDS) was the only medium through which I could get establishes the connection to the lesbian and gay for research purpose. Most of my interviewer were publicly known, they were recognized as a defender of LGBTI movement who have less hesitation to put forward their opinion publicly. Homosexual respondents of my questionnaire were different in level some of them were coming out to closet and some of were coming out only to their family and friends. Similarly some of them were publicly known to each other. In regards to civil society respondents most of them were the executive member or head of the human rights related NGOs.

### **3.3 Nature and sources of data:**

Sources of data regarding lesbian and gay are mainly depending upon the BDS and the FSGMN (Federation of Sexual and Gender Minorities, Nepal) Student forum. Direct observation, interviews and case study were major sources of information. Observation is taken as main instrument to analyze their overall behavior. For social science researchers in particular, observation techniques seem to offer a more objective and direct view of information of the subject. Direct observation in particular is a method in which a researcher observes and records relevant behavior, events and activities without participating i.e. detached perspective is emphasized in the method. In this approach researcher is watching rather than participating (Powell & Steele, 1996). Interview (semi-structural interview) was performed to know the homosexual life event which they felt, had shaped their sexuality. When and how they noticed their sexuality and their coming out experience and case study was applied to know their life history.

Individual consultations in different levels were also performed and those consultations were intended to develop a perception on lesbian and gay and learn about their programs, their strengths and their challenges. Collected data were checked and organized manually and later computerized for completeness and accuracy. The obtained information has been categorized under different subheadings according to the objective. Since the aim of the survey in the first stage was to get a broad understanding of the different aspects of the homosexuality.

### **3.4 Gaining access and building trust:**

Building trust to the concerned person is first duty of any researcher. So, I allocated enough time to build up confidentiality before taking any information or conduct any interview. After establishing the confidence i was able to create easy environment to talk and have access to the information. Participants were providing me a lot of information so I was worried initially how to sort out the unnecessary information but later on I am very conversant to select important one out of the pieces of information. I generally have provided lot of space to the information and also allocate reasonable time to understand their problem and to gain their confidence as well as believe them that I was one of their part of struggle through my research work.

Regarding the date, time and place of interview I was very flexible to them and appeared to them according to their preferable time and location. Although, I am belongs to heterosexual community, I received well behavior and comfortable company of them in the process of research. In most of their program I was invited and seriously asked to attend and put forward my opinion. While on the issues of privacy and confidentiality I was morally and legally obliged to maintain privacy of the participants. I follow "Do No Harm" principles while taking information or doing research. If the participants feel unsecured then we did not force him/ her to talk to us. Whatever I got information from the field I kept it confidential with giving pseudo name as well. Before conducting any research I provided the detail information to interviewer like the objective of the research, why am I doing the research? And, how it will be disseminated and used in future?

### **3.5 Sampling procedure:**

The data and information of the study were collected by using snowball technique. During the two months of data collection (June, 2012 to July, 2012) I attended all the support groups meetings and some other programs organized by the BDS. Being a human rights Officer at NHRC- Nepal, I have been handing their complain for years, some of the homosexual community member are known to me so one lesbian and one gay voluntarily assisted me to distribute my questions to other community members. Except this, I also managed some time for the participants to explain the objectives of my study and request them to take part in the research questionnaire while attending in program. They were my contact person, so some additional copies of the

questionnaires were given them to hand over the individuals of the network to whom they were in touch. The questionnaires were distributed through the snowball technique and returned me by the same channel through which it was distributed; except for a few that were handed directly to me.

Regarding civil societies, initially, it was difficult to determine who actually represents the civil societies. I searched the accurate definition of civil societies but could not get universally accepted definition of it. Many use the term Non-government Organizations (NGOs) as synonymously civil society organizations. Non-state, not for-profit, voluntary organizations that have a presence in public life indicate the civil society organizations (see chapter 5.1, Introduction section).

Questionnaires to civil society members were distributed to their own hand. I tried to meet them personally and it took me almost two month to collect the questionnaire. Out of 65 distributed questionnaires only 53 were returned with completing the answer, representing a respondent rate was about 81.5 per cent. It was, however, not possible to trace those individuals who had not returned their questionnaires as records was not maintained while distributing the questionnaires in order to protect their anonymity.

### **3.6 Semi- structural interviews:**

The interviews were made between June and July, 2012. They lasted from 20 minutes to 1 hour. I choose the four persons for semi-structural interviews, two from civil society member and two from homosexual member. I arranged date, time and place by telephone and it was conducted in different places like their offices, coffee house, and university canteen / meadows. A lesbian and a gay for this purpose, arranged by my above mentioned contact person. Lesbian was doing her Master's Degree and another gay was also the University student. Lesbian's speaking time, in general more than a gay. Civil society member for interview were arranged randomly according to their interest and availability. Interviews with community member were accomplished in BDS office whereas interviews with two civil society members had accomplished in coffee house and university meadow. While taking interviews, there was a technical obstacle like finding hard to talk to the recorder. Homosexual member were talkative and seem to enjoy telling their personal experiences in comparison to civil society member over the subject matter.

As interviews proceeded chatting informally, sometimes they wondered away from the questions while telling their personal stories but I did not intervene expecting new clues in their lifestyle. Thus I have a wide data composed from the stories of coming out processes and other experiences. With the use of unstructured interviews, the subjects were given the option of explaining their lives from any particular stage that was significant to their sexuality. They were asked to narrate the different life events that they felt had shaped their sexuality, the consequences, the reactions of society, and the stress and coping strategies. With the use of an interview guide, probing questions and clarifications were made to fill in the gaps and focus more on those aspects of their life that were relevant to the study.

Following the snowball sampling technique, first I asked the people I knew for interview, then after, I asked their colleague and colleague of colleague to interview. Because of the voluntary help of two homosexual member, I never rejected by their friends while interview. Actually, semi-structural interview is taken to obtaining necessary information from socially recognized and experience persons, who can provide required information.

The semi-structural interview was centered on the subject matter of police harassment especially frequent interrogation and keeping them in their suspicious list. Homosexual were compelled to sign mediation paper to amnesty to the perpetrator. Similarly, liberal perspective of civil society towards homosexual to provide certain level of recognition and their acceptance to living together rights with socio-economic benefit from State. But, they believed there is no room to compromise to give the name 'marriage' to any other kinds of union.

### **3.7 Focused group discussion (FGD):**

Two focused group discussion had happened each group had 3 persons. The classification of the group was based on civil society and homosexual community. It is also one of the major techniques of collecting qualitative data. FGD specially aims at social mapping and collecting the discriminatory issues effectively. It also helps us to obtain reliable information which makes us easy to construct the idea while mapping our decision. FGD is fruitful to cross check the collected facts. Because of involving more than two people in FGD diverse opinions comes and discussed which ultimately help us to generate new looks on the subject matter. In discussion most of

the participants accepts the fact that gender identity of the person is determined not only by the physical sex but also by her/his behavior, character and perception.

Similarly, there was big discussion about the proposed draft report of Constitutional Committee on Fundamental Rights and Directive Principles, thematic conceptual or preliminary draft report – 2066. Participant's explicitly mentions that the proposed draft has clearly confirmed that there will be no discrimination against any citizen in the application sexual orientation and this provision is very close to the constitution of South Africa. In addition, the focused group discussion was concerned on the subjects like recognition of the relation with providing 'living together rights'. Civil society member believed 'living together rights' is enough to legalize their relation. Radical activist argued that homosexual marriage would not bring any chaotic situation in society. Whereas other charged them that they raised the issues just because of getting dollar. Further, much discussion was held about the conditions while providing the living together rights to any homosexual couple and condition might be a year of probation period.

### **3.8 Case studies:**

Making case study on LGBTI individuals is a challenging task. Due to social stigma, exclusion and discrimination LGBTI member often hide their real identity. For an outsider, these are the facts that can make the research complicated. Thus it takes time to gain trust and overcome those difficult issues. The rationale of the case study is that it is useful in studying individual cases, a group, a community and an institution when the gravity of subject is unique. Moreover, case studies have increasingly been seen as an effective means of informing social behavior where there has been limited empirical conceptualization. Through the interaction with them, I realize that visibility of homosexual person is a crucial issue in the movement.

The respondent of the case study were chosen purposively. I conducted the case study to understand the impact of the hetero-normativity upon the homosexuality. While on field, I acknowledged that the pressure is always towards being invisible from their peer, family member and society and which lead them to tolerate violence. Similarly, I knew that coming out experiences were diverged among this group. Coming out to a colleague is a spontaneous process; without saying I'm gay or lesbian. Some of them discover themselves at the beginning of adolescent ages of their life and thought a

problematic situation. Further, case study suggested that when a person realized s/he is different than the heterosexual people, then conflict occurs in their inner heart. In most of the cases they try to suppress their desire and behave normal. Two persons were identified for case studies and collect their life histories of homosexuality. They were asked to share about their experience and knowledge over the issues in case studies.

### **3.9 Limitation of the study:**

The main purpose of the research was to the partial fulfillment of the requirement for the Master Degree in Sociology/ Anthropology. It was limited to the perception of civil society and human rights situation towards the homosexuality. Basically, focusing on the objectives of the research, some theoretical perspectives over sexuality and rights based approach was analyzed to the human rights related obligations of the State. Moreover, to make the study more reliable, interesting and weighted some interviews, talk program / group discussion, case studies with concerned people were included.

Due to economy and time constraints this study is limited in Kathmandu, Bhaktapur and Lalitpur districts (Kathmandu valley), that is why the findings may or may not be generalized for all over the nation.

## **Chapter-Four**

### **Human rights status of homosexual in Nepal.**

The chapter deals the social status of homosexual community which includes the background of castes/ethnicity, age, marital status and level of education. To know the human rights status, the sub-topic 'access to resource' is included along with some points like access to parental property, health service, education and public presence. Besides those points, I focused on the experience of coming out along with a scenario of homosexuality and reality in Nepal with mentioning some of their statement in their own words and also mentioned their strategy to cope the situation in this chapter.

#### **4.1 Introduction:**

It is the duty of government to respect, protect and the fulfillment of the rights and to ensure freedom from discrimination but in reality no progress had made till date in regards to legalize the same-sex relation. The Interim Constitution, 2007 has incorporated the principles of equality. UDHR, 1948 also states in its preamble that 'every organ of society' has human rights and must be accountable when human rights are violated. In addition, Ministry of Women, Children and Social Welfare (MOWCSW) is reviewing laws and government policies relating to sexual and gender minorities. Further, amendment had been proposed in the Civil Court, husband and wife section in point 3. The major proposed amendment was that the use of the word 'couple' in place of 'husband and wife' and instead of 'male/ female' there has been used 'Person' in point 5 of the above mention section. Similarly, MOWCSW also proposed the amendment in the provision of Civil Court's Marriage Register Act, 2028, Possible for Marriage, and state that there is possibility of marriage between 'two Persons' instead of 'male and female' (Karki, 2010).

The proposed draft report of Constitutional Committee on Fundamental Rights and Directive Principles – 2066 explicitly mentions no discrimination against any citizen in the application of general laws on the ground of sexual orientation (Bastola, 2010). When constitutionally promised 'no discrimination on the ground of sexual orientation', people have right to marry with their homosexual partner. Sexual orientation indicates heterosexual, homosexual or bisexual as well so people can go to Court for constitutional remedy if someone obstructed them to marry.

Majority of the homosexual respondent faced indirect discrimination at work which includes derogatory words, outrageous comments and worsening in relationships after coming out. Direct discrimination includes refusal of employment, obstruction of promotion and obstacles in professional development. Feeling of unsecured while talking about sexuality, necessity to control their appearance, dress, gestures and flow of informal communication are other example of indirect discrimination over homosexual community. Before coming out homosexual did not experience any discriminatory behavior in school or college but after revealed, they were frequently bullying from classmates and even from teachers. Sometimes, they refused admission or expelled them from school.

#### **4.2 Social status of the homosexual community:**

Social status is one of the major factors to measure the human rights situation of people. A lesbian claimed that the number of lesbian couples and support groups is increasing and estimated to 1400 lesbians who were out of the closet while gay are around 2,000,00. She further speaks that 36 lesbian couples are keenly waiting the law which legalize the same-sex marriage. More than three hundred thousand community members are in constant touch with BDS (BDS, 2010). The government's promise that the 2011 national census would allow citizens to identify themselves as male, female, or transgender was largely superficial gesture. Social prejudice and stigma, including on the part of census takers, resulted in gross undercounting of third gender individuals (HRW, 2012). Lesbian and gay do not have actual data about the number of their population because of the hidden nature of their activities. Most of their community members wish to hide their orientation and it makes difficult to advocate for their basic human rights.

**Table No. 4.1, Castes / ethnicity**

S.N.	Castes / Ethnicity	Lesbian		Gay		All total Number	
		Frequency	%	Frequency	%	Frequency	%
1	Dalit	2	7.6	2	9.1	4	8.3
2	Chettri	4	15.5	4	18.2	8	16.6
3	Brahmin	7	26.9	5	22.7	12	25
4	Janajati	13	50	11	50	24	50
5	Total number	26	100	22	100	48	100

Source: Field Survey, 2012

The distribution of castes and ethnicity among homosexual population is diverse. The respondents of homosexual were mainly from Dalit, Chettri, Brahmin and Janajati where Janajati represent 50% of total respondents. Similarly, Brahmin, Chettri and Dalit represents 25%, 16.6% and 8.3% respectively. Regarding to the gender participation, there seems similarity in percentage between the lesbian and gay. The percentage of gay was little more than lesbian in Dalit and Chettri but it was opposite in the case of Brahmin where lesbian were little large in number of percentage. Janajati people are supposed to little flexible to marriage and life partner. It is also believed that their less hesitation to open their sexuality might one of the causes to represent large volume (50%) of the total respondents.

**Table No. 4.2, Respondent's age**

S.N.	Participant's Age	Lesbian		Gay	
		Frequency	%	Frequency	%
1	15 - 20 Years	1	3.8	--	--
2	21 - 25 Years	10	38.5	6	27.3
3	26 - 36 Years	14	53.8	13	59
4	37 - 47 Years	1	3.8	3	13.7
5	Total Number	26	100	22	100

Source: Field Survey, 2012

Although it is said that majority of the homosexual person noticed their sexuality during their early ages but representation in number in the research questionnaire was very low. It was surprising that only 1 person out of 48 was from the age 15 to 20. Most of the homosexual respondents were in between 26 to 36 where lesbian represent 53.8% and gay represent 59 %. However, the number of homosexual between the ages 21 to 25 was also remarkable which count 38.5 % in lesbian and 27.3% in gay. Only 4 persons were in between 37 – 47 and among them 1 represent lesbian. All the respondents were under the age 47 so I mentioned the age scale not exceeding than 47 in the table mentioned on the above.

**Table No. 4.3, Marital status**

S.N.	Marital status of homosexuals	Lesbian		Gay	
		Frequency	%	Frequency	%
1	Single	10	38.5	13	59.1
2	Partnership with same sex	7	26.9	3	13.6
3	Married to opposite sex (Forced + Bisexual)	5+4 = 9	34.6	2+4 = 6	27.2
6	Total Number	26	100	22	100

Source: Field Survey, 2012

During the interview schedule I asked the homosexual respondents, how would you introduce your partner? I found the same terms of introduction which we commonly found in heterosexual couple. *"I refer to him as my husband, I introduce her as my wife"*. But a lesbian, aged 34, Intermediate, expressed her distaste the term 'wife'. She viewed 'wife' as too heterosexual-normative, derogatory, and even subservient. She told that the term 'wife' came from heterosexual marriages and made clear that *"I've been a wife before and I won't be a wife again."* The above data (Table no. 4.3) shows that 38.5 % lesbian were single, 26.9% were living with same-sex partnership whereas 34.6% were married to opposite sex. There seems two categories in opposite sex marriage: forced and bisexual, 19.2% represented forced marriage and 15.4% bisexual. In contrast, 59.1% gay represented single status, 13.6 % were living with same sex partnership and 27.2 % represented opposite sex marriage. And, only only 9 % were forced and 18.2 % were bisexual in regards to gay.

While comparing the data between lesbian and gay, nearly 60 percent of gay were single whereas it was only 40% in regards to lesbian. Similarly, partnership with lesbian was nearly double in percentage than gay where lesbian represent 26.9 and gay represent only 13.6 percentage. The high percentage of single gay indicate that they could have more courage to resist the obstacles than lesbian.

The low percentage of single categories of gay indicate that they need not to live together to establish relation to their gay partner because male are free to walk and live in comparison to lesbian. While concerning the age, ethnicity and education of the living together with same-sex sexual partners, all most all 7 lesbian couples were under the categories of Janajati and 1 out 3 gay couples was under the Bhramins and two couples represent Janajati. Lesbian were under the age between 20 to 35 whereas gay were under the age between 25 to 35. They had various educational qualification range between class 8 to University degree.

*"I do have some attraction to women, but am also married, love my husband and never would consider breaking my vows and have no interest in pursuing that route ever"*.

***A girl (student leader): 22 Years.***

**Table No. 4.4, Level of education**

S.N.	Level of Education ( Lesbian/ Gay)	Lesbian		Gay	
		Frequency	%	Frequency	%
1	Secondary, 8 Class.	11	42.3	6	27.3
2	S.L.C.	5	19.2	5	22.7
3	Intermediate	5	19.2	5	22.7
4	Bachelor's Degree	3	11.6	5	22.7
5	Master Degree	2	7.7	1	4.6
6	Total Number	26	100	22	100

Source: Field Survey, 2012

While on the issues of education most of the homosexual respondents respond that school, college and university are not friendly to them. Peer groups and even teacher makes fun of their sexuality. Often, they are the subject of pejorative jokes. Pressure to hide their sexuality in all the places like home, society, school and college which discourage them to study and kill their self-encouragement to progress in life. Most of the teachers believed that homosexual identification will disturb the school's environment and they are always in search the suitable allegation to restrict homosexual students from schools.

Most of the case education authorities and schools discriminate young people because of their sexual orientation. Sometimes they were refused to admission or expelled in different charge. It is the rights of student to receive comprehensive, accurate and age-appropriate information regarding human sexuality but which was not included in school curricula. While talking about the level of education among the respondents only 42.3 % lesbian crossed secondary level (8 classes) whereas it was 27.3 % in gay. The percentage was same at SLC and Intermediate level where 19.2 % lesbian and 22.7 % gay had passed SLC and Intermediate respectively. But in regard to Bachelor's degree percentage of gay was nearly double where only 11.6 % lesbian and 22.7 % gay passed this level. In regards to Master Degree educations lesbian were little more in the number of percentage.

#### **4.3 Access to resource:**

Discriminatory behavior of families and society can reduce the ability of same-sex community to enjoy the full range of human rights. When homosexuality is known either they are not given a job or their promotion is stopped and fired. In many cases, even the perception of homosexuality puts people at risk. Violation includes boycotting from home, society, physical attacks, torture, arbitrary detention, rape,

killing and the denial of rights to assembly, expression and information. While talking about the human rights situation, a lesbian shared her experience that they were always in threat inside and outside the family. She could not feel secured even today while walking on street, traveling and doing some business.

*“We faced lot of problem, we were told to leave the room / flat where we were staying. We were also denied to live near by the community. A large campaigning was formed against us and charged us as social evils”.*

*(A lesbian age 30, 8 classes)*

**Table No. 4.5, Level of access to resource**

S.N.	Subject	Lesbian				Total	Gay				Total
		Yes		No			Yes		No		
		Fre	%	Fre	%		Fre	%	Fre	%	
1	Access to ancestral property	4	15.3	22	84.7	26	15	68.1	7	31.9	22
2	Access to health services	16	61.5	10	38.5	26	16	72.7	6	27.3	22
3	Access to education	13	50	13	50	26	11	50	11	50	22
4	Access to public presence	4	15.3	22	84.7	26	7	31.9	15	68.1	22

[Note: Fre. = Frequency.] Source: Field Survey, 2012

The data (Table No. 4.5) explain the social status and level of access upon the resource to homosexual communities. Access to resource also reflects the human rights situation. To measure the situation of homosexual I mentioned different indicators like access to property, health services, education and public presence. While going through the table, there seems great difference between lesbian and gay in property rights where only 15.3 % lesbian enjoyed the rights which in contrast it was 68.1% in gay. While concerning to health facility data reveals that more than 60% of lesbian and gay have access to health. Although, the percentage was little bit more in gay. Interestingly, both of them were in 50% in regards to education. Regarding to public presence it shows very desperate situation to community member only 15.3% lesbian believe that they have easy access to public presence whereas it was more than double or 31.9% in comparison to lesbian. The data clearly indicates the unfriendly situation over homosexuality.

Regarding to access to ancestral property indicate the vast difference between the distribution of resource. The differences might be the influence of patriarchal system in the distribution of family property. Similarly, the similarity on the access to health services above 61% in both cases lesbian and gay indicates that they need not to face problems until they identified themselves as a homosexual to doctors.

#### 4.4 Experience of coming out:

The coming out of a friend or family member can be extremely disrupting on one's family and social life (Duffy & Knutson, 2006). Friend and family member may feel a desire to maintain the privacy of the individual in order to avoid being disliked or for the fear of personal safety. The people I interviewed were having diverse coming out experience. Although I could catch some patterns, it is really hard to make categorizations among them. Some respondents discovered their orientation at the age of 12 to 14 whereas some others discovered it in different stages of their ages. According to homosexual community member the major obstacles for coming out is lack of the rights that supposed to protect homosexual individuals. Most of the respondents mention that they lose their jobs if their identity is found out and compelled to tolerate torture of family silently. They are always in risk of getting fired from job thus they make more effort to prove their performance. Besides keeping their life away from the bad effects of being homosexual, they need to compare themselves with the others and try to better.

**Table No. 4.6, Homosexuality realization age**

S.N.	Age variable	Lesbian		Gay	
		Frequency	%	Frequency	%
1	10 – 19 Years	20	76.9	10	45.5
2	20 - 25 Years	6	23.1	8	36.3
3	26 - 36 Years	0	0	4	18.2
4	Total Number	26	100	22	100

Source: Field Survey, 2012

According to the data (Table No. 4.6) most of the homosexual noticed their sexuality during their teen age and only few numbers of people noticed it later of their ages. The ratio of the age between lesbian and gay comparatively difference where large majority of lesbian noticed their sexuality before the ages 25 whereas it was little less percentage in the case of gay. 76.9 % lesbians noticed their sexuality during the age's

between 10 to 19 and it was 45.5 % in gay. Similarly 23.1% female and 36.3 % male noticed their same-sex sexual orientation at the ages between 20 and 25. Surprisingly, during the age 26 to 36 there were zero representation of female in contrast it was 18.2 % in gay. Further, the data reveals that male might notice their sexuality even during the late of their ages around 26 – 36 but no such evidence was found in the case of lesbian. So, coming out is not a momentary event, it is rather a process.

**Table No. 4.7, Coming out status**

S.N.	Coming Out Status	Lesbian		Gay	
		Frequency	%	Frequency	%
1	Known to all	3	11.5	5	22.7
2	Known to BDS	9	34.6	10	45.5
3	Known to Family	5	19.2	0	0
4	Keep secret.	9	34.7	7	31.8
5	Total Number	26	100	22	100

Source: Field Survey, 2012

From the beginning of the socialization, a child faced problem that why s/he is interested in same sex friends? Why her/ his feeling contradicts the social norms? With the effect of these feeling, even the individual started to think that s/he is an abnormal or even sick. The data of 'Coming Out Status' explores that some of them are invisible to their families but come out in public sphere; on the contrary, some who come out to their families are invisible in public life. Comparatively, gay are nearly two times ahead in the case of 'coming out' publicly where the status of 'known to all' is 11.5% in lesbian and 22.7% in gay. It is supposed that gay feel little comfortable in society than lesbian. But, while concerning family, the data reveals very disappointing situation over gay where no one could open their orientation to family because of the fear of boycotting from family and ancestral property. But, in regards to lesbian they were 19.2% who share their orientation in family. The number of known to all, known to BDS is comparatively very high number in gay. Similarly, the number of people who keep their orientation secret is also remarkable; it means they came to the closet one. Neither their family nor any organization or society became aware about their status. They represent 34.6% lesbian and 31.8 % gay. From the field observation I noticed that most of the bisexual represent the section of secret people. Coming out status also indicate the peoples situation, how much free they are to discover their identity in relation to the use of human rights.

**Table No. 4. 8, Family response towards Coming out**

S.N.	Response	Lesbian		Gay	
		Frequency	%	Frequency	%
1	Positive/ supportive	5	19.3	4	18.2
2	Negative	21	80.7	18	81.8
3	Total	26	100	22	100

Source: Field Survey, 2012

Family response towards coming out is major indicators to analyze the situation of homosexual in any country. If their parents are supportive and encouraged them to come out then their situation is good and if parents stopped them to come out then their human rights situation is worse. The numerical data of the above table do not tells the friendly situation of same-sex community, no matter whether they are lesbian or gay. Most of the respondent's relation with their family was fragile due to same-sex orientation. While talking over the data (Table No. 4.8) about the family responses towards coming out process shows that only 19.3% of lesbian's family took the issues positively whereas it was only 18.2% in gay parents. Majority of the homosexual parents still do not like to co-operate the orientation which is different from heterosexual orientation. Above 80 % of homosexual family still have negative attitude towards homosexuality. Despite the Court order, many gays and lesbians said the religious aspect of the country that dictates the social life makes it hard for them to come out their families. While in semi-structural interview, a man aged 30, Bachelor's Degree, who identified himself as gay and sometime bisexual during the conversation, refused to be recorded for the interview state that despite the tremendous gains made by the homosexual community, he does not feel safe coming out to his own family, including his wife. He further said, *"I cannot imagine what it will be like if my wife finds out that I am gay"*.

#### **4.5 Reality of homosexuality:**

The parents may notice something different in their child but unless naming it, it is invisible and not a big issue for parents. If homosexuality is hidden, experienced silently and not mentioning the name gay or lesbian there is no problem. But when declared homosexuality as an identity then mounts of pressure, discrimination and violent reaction need to face by the person. A bad image has been created for homosexuality so they are frequently rejected by the society.

*"I am one of those horrible lesbian people that is ruining after family customs and traditions. I grew up in a 'traditional' family with full of love and the 'family customs' which are considered normal to most of you. My parents are both a man and a woman so it was never in their plans or intentions to have a lesbian child. And I'll be honest; it was not easy for me to accept".*

**(A lesbian - 23, Bachelor's Degree)**

The first reaction of the family, after knowing their child orientation, was taking them to doctor or psychologist to treatment, thinking that it is a kind of disease which will be cured after medical. Neither family nor society understands their problem; they behave them inhuman and tagged them as a people having psychological disorder. People are not ready to accept homosexuality is normal and it would not be a choice. As father and mother both are heterosexual and they had never plan to have a lesbian child.

*"Let's see what is bad in my gay lifestyle, I get up at 7: O'clock, do some exercise, and breakfast at 7: 30. 8 O'clock take morning class in highly paid private college. 10 O'clock I joined my office. By 5, I go to my flat to boyfriend, sometime evening walk and watch television with having dinner, and talk about my day. 9 O'clock shower and relax. Well, boyfriend and I do sleep on the same bed; is that's inhuman? Just like how any other heterosexual couples share a bed".*

**(A gay - 42, Master Degree)**

A lesbian who is living with her same-sex sexual partner for eight year still could not open her orientation to her mother which indicates the horrible situation of homosexuality in Nepal. She shared that she has great fear of elder brother who is very conservative. She twice went to her home Sarlahi from Kathmandu to meet her mother but could not be able to tell the truth because she could not like to hurt her mother and father who are now over 65 years. She further stated that she was confirmed if she disclosed her orientation to the family then they would compel her to marry with a heterosexual male immediately. They even do not care the behavior, education and profession of the male. The decision will be made even without taking her consent. She further told that no one could able to explain to her satisfaction in lesbianism, what harm same sex marriage does? Or how it personally affects anyone other than the two people involved? If no one is harmed and the two people involved are happy, why not allow to same sex marriage?"

*A lesbian pseudo name (Sima, 29), who frequently got tortured and threat to life from her own family member left the house when she could not bear the physical and mental torture. Later she was rescued by BDS. Last year, after five years of separations, she went to meet her family especially to meet mother during the time of great festival of Hindu called 'Dashain'. She was stopped to enter her house; she cried and requests an audience of her mother, who continuously love even after her same-sex sexuality opened. People of the society threatened the family not to visit her. She was misbehaved, got degrading treatment by her own family and neighbors and compelled to return from her own house. That day she stays at someone's house which was nearly 2 hours walking distance from the house. The following day unexpectedly her mother came to visit her in that place. They secretly meet each other and weep together for long time. She complained in police station to punish the people who obstruct her to enter her own houses. Nothing had happened; even today she does not feel safe while going to her home or hometown. She reported the case but did not get effective justice from the government. Instead she was teased and harassed in public places and transportation. She further said that conservative people still think that homosexuals are the evil of society. Due to this stigma same-sex community hardly could complain against violence. Issue of torture, frequently remains unreported, undocumented and finally perpetrators escaped from the punishment. Rarely, very few representative issues come out and provoke public debate due to the rejection of their human rights.*

*"It is terrible that people always tease and makes fun of us. Two times I went to police administration against intimidation and torture but nothing had happened even they did not bothered to summon the perpetrators to the police station. We are always in psychological torture"*

**(A Gay aged 32, Bachelor's Degree)**

In a separate question about human rights situation to homosexual community I asked the statement 'equality, dignity and justice for all' is equally applicable to you? All most all lesbian mentioned that 'no' whereas only 3 out of 22 gay member mentioned yes. It means 100 percent of lesbians deny that they have equality in opportunities, dignified life and justice from civil societies and state. In contrast only 13.63 % gay believe they have equal access to opportunities, dignified life and justice. While in

interview majority of the lesbian states that human rights violation taken in place of temples, airports, government offices and public toilets. These problems usually arise when their appearance does not exactly match their identity documents. They are harassed and teased in places such as parks, canteens, hotels. Due to such discrimination, no lesbian chooses the issue of equality, dignity and justice.

Similarly, in another separate question, I asked them about hesitation to say sexuality. Large number of lesbians, 24 out of 26 or 92.3% experienced hesitation to say publicly about their orientation or not able to disclose their orientation to family and society whereas the number is little lower than lesbian in the case of gay which cover only 77.3 %. The data also proved the discriminatory status of female with compare to male. Society is far friendly to male whatever their orientation due to patriarchal family system. The data also indicate that lesbians are suffered in double layer once as being a women and another as a lesbian when their orientation is disclosed. The percentage of the lesbian and gay was above 77% in the question of hesitation which indicates the level of prejudiced perception towards same-sex orientation. The fact figure of the percentage revealed the negative attitudes of people towards lesbian and gay. It also shows the majority of populations still reject the orientation other than the mainstream heterosexual orientation.

Furthermore, in the question of family knowledge on child sexuality, In both cases, majority of the family were not aware about their children's sexual orientation. Only 26.9 % lesbian's family and 40.9% gay's family were aware about their children sexuality.

#### **4.6 Strategies adopted to cope with the situation:**

When a person noticed that s/he is different than the heterosexual people then a kind of conflict came in their mind. Initially, to cope the situation they repress their desires and try to behave normal. However they admit, they could not suppress their sexual orientation. Most of the homosexuals experienced frustration when their orientation contradicts with the existing social norms about sex and sexuality. They became worried and annoyed with friends, family, teachers and society which always insists them to apply heterosexual norms that sexual desire can only be possible with the opposite sex. Due to these constructed norms, homosexual are compelled to live silence, they did not dare to tell anybody and keep their orientation secret.

*A case pseudo name (Rima, 32) which was publicly came in media also. She was living with her husband since 12 years and has an 8 years old daughter. No one knows, even her husband that she is lesbian too. When her same-sex sexual relation divulges then a great dispute broke-out between husband and wife. Actually, she was carrying out both sexual relations simultaneously since more than a decade. When she was caught, she faced lot of torture and kept only inside house boundaries till 6 month by her own husband and family. She neither went to complain anywhere nor could her same-sex partner fight against the torture due to fear of family and society. She continuously got torture till one year and sent to rehabilitation centre for four month thinking that the same-sex orientation would be cured and changed after good counseling or medication. Finally, she decided to take divorce from her husband and settles a new life with her same-sex partner. Now, the couples were happy and she shared she just celebrated her fourth anniversary years of the partnership.*

*“I noticed my same-sex orientation at the age of 12. I secretly continue my same-sex sexual relation even after my marriage to man. But, a great misfortune came, when my husband caught us on the same bed. We were beaten severely by bamboo stick. Neither we could go to complain anywhere nor do we fight against torture at that time due to fear of family and society.”*

*(A Lesbian, 32, Under SLC)*

## **Chapter-Five**

### **Civil society perspective towards homosexuality**

The liberty to live a peaceful, happy and prosperous life depends on civil society. Individual learn to treat one another with respect through the institution like family, marriage and religion through which they come to the help as well as criticize and punished each other at a time. It is really hard to say who actually represent the civil society so in this chapter I draw some definition of civil society in introduction section. Further, a brief analysis of the socialization of Nepalese community and perception towards homosexuality along with data tables are mentioned in this chapter.

#### **5.1 Introduction:**

It was difficult to determine who actually represents the civil society. I searched the accurate definition of civil societies but could not get universally accepted definition of it. Many use the term Non-government Organizations (NGOs) as synonymously civil society organizations. World Health Organization (WHO) defines - a civil society organization is non-state, not for- profit, voluntary organizations formed by people within the social sphere of civil society. World Bank defines “the term civil society to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations”. Likewise, Collins English Dictionary defines civil society is the aggregate of non-governmental organizations and institutions that manifest interests and will of citizens or individuals. As my dissertation is about human rights, I included NGOs related to human rights as civil society organization and its representative as a civil society member. There are numerous NGOs related to human rights working in Kathmandu valley. I paid special attention and developed tools to selects the organization which were really suit for the purpose of my thesis.

Due to the nature of my dissertation human rights related NGOs are the best example to represent the civil society’s members. A valid question raised in my mind that how can I decide the appropriate organization working in the sectors of human rights from the Kathmandu valley? Then, first I visited the Promotion Division of NHRC – Nepal and collected the name list along with email address of human rights organization

whom they invites their every major function like Annual day of NHRC (May, 26) and International Human Rights Day (December, 10). I collected a list which included around 100 in number of civil society members and similarly 100 numbers of non-governmental organizations available in Kathmandu valley. I developed a checklist and made different level of consultation with the 10 Human Rights officers of central regions. I verify the name list with officers asking them to choose the organization which are frequently in touch with NHRC. I inform them to choose only 25 civil society representatives and 40 organizations out of those lists. Thereafter, I distributed almost 65 questionnaires to the concerned member or head of the organization.

## **5.2 Socialization of Nepalese community:**

Nepal has a patriarchal society where women are always considered to be second to men (Thapa et al. 2009). Women are seldom in a decision-making position in the family (Acharya et al. 2010). Sexual minorities LGBTI have recently been recognized at government level, the appointment of Gay leader as a CA member can be taken as an evident of recognition of homosexual from political parties and the government as well. Nepal is a male dominated conservative and religious society which condemns any sexual and gender identity other than homosexual (Thapa, 2012).

*"I do not have any belief in same sex marriage. Marriage has been defined since the beginning of time – between a man and a woman. It's an incredibly small group that chooses to be a lesbian and gay and want to redefine marriage".*

*(A women - 35, Intermediate)*

Heterosexuality is a traditional norm which is thought to be natural, unproblematic, taken-for-granted and ordinary phenomenon (Kumashiro, 2009). Most of us are institutionalized to consider male and female as the only two possible sexes and it is assumed that heterosexuality is the only possible sexuality that a person can have (Bista, 2011). Historically also Nepalese laws were guided by Hindu religion. Nepali people have many strong traditional norms and beliefs on sex and sexuality (Mahat & Scoloveno, 2001). Traditional approach of gender identity recognizes only male and female and believe that homosexuality is unnatural and a social stigma and sometime even the supporters of homosexual's rights have been subjected to violence and harassment.

While talking about sex and sexuality a women human rights defender, 32 said that homosexuality is not the major problem of Nepal. We have many more genuine issues need to be addressed immediately. Still, majority of Nepalese population are under the line of poverty, lots of mothers are still suffering to death due to lack of medicine or doctors at the time of pregnancy. Now and never the issues of homosexuality would be our priority. First, we need to eradicate poverty from the nation. Just because of getting dollar some people are running after homosexuality. She further adds that she does not mind if anyone is able to get some dollar in the name of homosexuality. But we live in a society and have a system. We should follow the values and culture of society. For example, if some one walk on the street naked or want to suicide then, can we /state allow her/ him to walk? Can we allow them to suicide? Not because s/he is doing some thing against the societal norms though we respect everyone's choice.

**Table No. 5.1 Defining homosexuality**

S.N	Variable	Frequency	%
1	Normal	30	56.6
2	Abnormal	14	26.5
3	Disease	9	16.9
4	Total	53	100

Source: Field survey, 2012.

The data (Table No. 5.1) of the research verify the fact that peoples' perception are changing gradually regarding homosexuality. 56.6 % civil society respondents believed that same-sex sexual orientation is normal means it is natural. Although, 26.5 % believed that they are abnormal. Similarly, 16.9 % people believed that homosexuals are diseased one who have either psychological or any type of medical disorder. While analysing the above data minutely, still great number of people supposed that homosexuality is not normal which cover  $(26.5 + 16.9) = 43.4$  % . The numerical volumes of this section is enough to create negative environment, if they did any mistake. The data shows no absolute majority in any section which indicate the people's perception towards homosexuality in Nepal. Still people are sharply deviding over the issues of homosexuality in Nepalese society. Actually, the 43.4 % of civil society member represent the conservative one who have religious mindset and could not accept the same sex intercourse in societies. As we know in literature review that before 1973, LGBT people were considered to be mentally diseased, sick

or ill even in America. But when American Psychiatric Association (APA) in 1973, removed homosexuality from its lists of mental diseases then large section of population behaved them as a normal people. As expected the data also saw the peoples changed scenario where nearly 57 % of the civil society leader perceived homosexuality as a natural one. Earlier, lesbian and gay find themselves subordinated, marginalized, stigmatized and excluded but nowadays scenario has been changed. Supreme Court, 2007 decision crates positive environment to perceived homosexuality as normal phenomena. Social and political discourse on equal opportunities in working life has recently begun to encompass sexuality in different government and non-government offices.

**Table No. 5.2, Appropriate provision for homosexual**

S.N.	Variables	Frequency	%
1	Present situation	7	13.2
2	Allowing living together	25	47.2
3	Right to marry	13	24.5
4	Restriction of homosexual movement	8	15.1
5	Total	53	100

Source: Field survey, 2012

The major concern of my research contains in this ( Table No. 5.2) data table. The data of the table will obviously lead my conclusion but it does not mean devalue the other sections of the data which also are equally important to support and build up my confidence to form my conclusion. It is interesting that neither one section secured 50 percent of the participation's vote which denotes diversity of opinion over sexual orientation.

Only 47.2% tick the option – allowing living together whereas 24.5 % stands for right to marry in regards to homosexual couples. Analytically, if we assume allowing living together is very close or equivalent to marriage rights then the situation of Nepal for lesbian and gay are far better which combinely represent 71.7 % of people's loyalty towards homoosexuality. The percentages 71.7 % clearly indicates that civil society leaders are ready to accept their recognition which might be civil union or partnership rights or marriage or equivalent to marriage rights. In this context, data clearly signals that the number people's support in favor of same sex marriage seems dramatically increasing in Nepal. While analysing the data from the opposite point of view that

only 13.2 % like the present situation of the country. Present situation is frustrating over homosexuality because till date not a single legal provision has amended in line with supreme court decision, 2007 or in favor of the lesbian and gay in Nepal. Likewise, 15.1% of peoples were stands for restriction of the homosexual movement. While combining  $(13.2+15.1) = 28.3\%$  of the civil society members still against the homosexuality. So, homosexual community need to be more specific while starting any movement . Even a minor mistake or mislead of the homosexual leader may break the peoples' supportive attitudes towards homosexuality.

*"People should be free to choose their partner and not to be compelled anyone for false marriage. Living together or partnership right is enough for the recognition of lesbian and gay as they are unable to produce any child."*

*(A men - 30, Bachelor's Degree)*

### **5.3 Perception towards homosexuality:**

Sexual orientation or gender identity (SOGI) leads to abuse in the form of discrimination, violence, imprisonment and torture even today across the globe which clearly reflects the people perception on homosexuality. In Nepal, after April uprising 2006, LGBTI members are recognized as a minority group but still they are discriminated, disadvantaged, deprived, degraded and denied to justice and human rights. The current legislation and the Interim Constitution of Nepal are silent on the issues of homosexual. The representation of LGBTI in government offices, the judicial sector, Commissions and local agencies is nil. There is no evidence of quotas being reserved for individuals belonging to these communities in any governmental or private institutions yet.

Regarding the query for the provision of marriage majority of the civil society member mentioned that state should provide 'living together' rights to homosexual community which is also practice in many developed countries. They believed living together (civil union) rights is enough for their recognition and identity. But, some radical activists speak in favor of the marriage provision to homosexual while other insisted that living together (civil union) rights is enough to provide access to the benefits for homosexual couples which heterosexual married couples get from society and state e.g. pension entitlements, property and housing facility to a surviving one after the partner's death.

Majority of civil society member also said that marriage is the institution where only male and female or heterosexual persons are allowed to keep the sexual relationship to continue the generation. The relationship is practiced and institutionalized ages before and called 'marriage'. Marriage is naturally occurring, pre-political institution that emerges spontaneously from society. Western society is drifting towards a redefinition of marriage as a bundle of legally defined benefits bestowed by the State (Morge, J. 2005). So, it is wise to search the alternate name to legalize homosexual relationship which is more or less equivalent to marriage and marriage rights. They further said that it is not justice to give the same name marriage to any other similar type of institution because it creates lot of confusion in society. Instead, State can define and classified the homosexual couples as a kind of family without mentioning the word marriage. It is well known fact that they do not capacitated to produce child so "civil union" or "living together" is the best for Nepalese contest which is also model role even in some developed country.

*“I’m not against homosexual people. They should be afforded the same social and economic benefits that supposedly straight people derive from marriage. Living together or partnership rights would be the best provision for them”.*

*(A civil society member, age 25, Master Degree)*

**Table No. 5.3, Discriminatory practices.**

S.N.	Name	Numbers	Percentage
1	Use of parental property	6	11.3
2	Health Services	4	7.5
3	Job Facility	6	11.3
4	Public presence	30	56.6
5	Not at all on the above	7	13.3
6	Total	53	100

Source: Field survey, 2012

The data (Table No. 5.3) entitle ‘discriminatory practices’ reveals the fact that discrimination in public presence was found at large level where 56.6 % civil society members mentioned their concern whereas the discriminatory situation over the health issues was only 7.5%. . Likewise, 11.3 % people feel discriminate in property rights and job facility. The other striking feature was the attitude of people who still think

that homosexual did not face any discrimination they represented only 13.3%. Although, they were in small in number they could not be ignored because 13.3 % keeps great value in numerical meaning. Data about public presence indicates the exclusion of homosexuality in society. Similarly data of health services denotes that they do not face discrimination while health checking until and unless they disclosed their sexual orientation.

**Table No. 5.4, Does homosexual deserve special rights?**

S.N	Need Special Rights	Frequency	%
1	Yes	38	71.7
2	No	5	9.4
3	I do not know	10	18.9
4	Total	53	100

Source: Field survey, 2012

Finally, to summarize the perception of civil society towards homosexuality I asked a question that does homosexual community deserve special rights like other disable and indigenous people gets from the state. Peoples opinion were sharply divided where 71.7% of civil society member favor special right for same-sex communities and only 9.4 % people stands in opposite of the provision. The data explicitly indicates the peoples changing attitude towards homosexuality. Similarly, there were some people who still think that homosexuality is sin for society and it should be ban in the country.

Religiously marriage is supposed to continue the generation but now the traditional definition of marriage is in the process of change. The level of education, scientific inventions and development gradually shift the traditional believe about sex, sexuality and gender which indirectly change the concept of marriage as well. Earlier loss of virginity before marriage was great issue but now it's common that a grown up woman can have sex with a man. In such cases, a child can be born, intentionally or otherwise. That is natural. Actually the above sentences were part of the land- mark decision handed down on 29 July by a bench of Nepal Supreme Court made up of Justices Arbindanath Acharya and Rajendra Nath Nakkha in response to an appeal filed by petitioner Annapurna Rana against a lower court decision. The Annapurna Rana's case was significant in that it compels Nepali society to take another look at parental or familial attitudes.

Actually people now may or may not wish to have child after marriage, some people take marriage as a means of entertainment which supply the safe sex regularly and with the advent of family planning it is made possible. The above mentioned decision clearly convey the message that one need not to be a married to have a child and virginity is no more a condition to have marriage. Similarly, homosexuality is a social taboo and punishable crime in Nepal but now they are demanding rights to marry. They claimed they are living together and enjoying the sexual relation and it becomes a great discourse in Nepal. They are lobbying with different governmental authorities for their recognition and identity which was really a great challenge to earlier marital system which believed only heterosexual marriage. So, from the following facts we can say that attitude towards sex and sexuality become changing and people practicing the sexual relation with same sex person which earlier was considered a crime. Principally equal treatment, receive well behave, dignified life, liberty and freedom are unalienable rights to any human being which are guaranteed even in constitution of the State. State is responsible to maintain those rights equally for all citizens of the nation so it needs to be very sincere and cautious while addressing the issues of homosexuality.

## Chapter-Six

### Summary and conclusion

#### 6.1 Summary:

State rules were mostly guided by traditional norms, values and cultures where same sex sexual orientation has taken as a crime. Various social and cultural factors still discourage coming out to the homosexual community. It's almost seems impossible for them to come out and create a distinct space for them. Discrimination on the grounds of gender identity/ expression was also responsible for the denial of civil rights to homosexual. State mechanism has made discrimination because homosexual activities are still kept under the definition of 'unnatural coition'. After the Supreme Court verdict, 2007 people gradually changing their stand on social values regarding to sex, sexualities and marriage but it could not be able to eradicate the conservative thought of people. To avoid this kind of prejudice requires collective effort from concerned stake holders. Schools, college and education authorities should apply principles of non-discrimination and diversity in school curricula and discourse.

However, recognition from CBS, EC, NHRC and different other state organs indicates the people's liberal perspectives towards homosexuality. Moreover, selection as a CA member from homosexual community indicates the political commitment to bring them in mainstream development. Likewise, the MOU between MOWCSW and BDS to undertook review of laws and government policies against sexual and gender minorities indicates the positive attitude of government towards the recognition of homosexuality.

In spite of all the efforts, no recognition in family and social life, frequent dishonor and degrading treatment, eviction from family, violence to the level of deadly attacks are the current scenario of the nation. Majority of the population are heterosexual so it is not surprising that state rule, regulation, societal norms and values favors heterosexual orientation. Everything like literature, religious books, cultures were developed keeping the mind heterosexuality in centre.

Civil society member argue that Nepal is far ahead in recognizing the homosexual in Nepal than other Asian countries. They also argued that government is doing some nominal work for cheap popularity in Asia. Although discriminatory legal provisions

were gradually amended to meet the international standards of human rights and justice but the implementation status of the provisions was very slow. System changed, regime changed but it could not be able to change the people's attitude regarding homosexuality.

Generally, it is taken to the reference of Australia, America and Europe while lobbying homosexual rights in Asia especially in Nepal but even in those countries people are sharply polarized on the issues of homosexuality. Still the data shows not favorable situation of lesbian and gay even in America and Australia. Recently on 19 September 2012 Australian Parliament overwhelmingly rejected the bill of gay marriage. Both Prime Minister Julia Gillard and opposition leader Tony Abbot voted against the bill (BBC news, 2012). Although, President of USA, Barrak Obama announced in favor of gay marriage, Julia Gillard (Australian Prime Minister) announced that she would not support the homosexual movement. According to report released in May, 2011 by the ILGA, still 76 countries criminalized homosexuality and 5 out of 76 countries apply the death penalty for practicing same sex intercourse they are Iran, Saudi Arabia, Yemen, Mauritania and Sudan. Only 11 countries are legalizing the same sex marriage which is really a low number of representations in the world.

Societal values could not be ignored no matter how much we developed and educated if the existing values serve the vast majority of the people and maintain the societal behavior orderly. It is well known fact that western countries are highly developed and leading in every scientific invention in the world that already have even access to moon; even they do not like to cross the societal boundaries regarding sexual orientation over nightly. But, it does not mean that they totally discarded the issues of sexual orientation; they accepted the existence of homosexuality and prioritize the issues for a big discourse. Some countries granted same-sex marriage and some country granted equivalent to marriage rights like civil union or living together and some other countries are open for discussion over the issues.

## **6.2 Conclusion:**

Majority of the respondent mentioned that homosexuality is not a diseased. To some extent, their birth is supposed to close to the birth of disable and handicapped child with blind and deaf which has very low rate of birth percentage. But due to traditional

mindset, people could not easily accept the existence of homosexual whereas they accept the existence of disable or handicapped people with loving manner. That is why state should promote inclusiveness in society where homosexual people also enjoy the right to 'living together' with their same-sex partner without any hindrance. Furthermore, to institutionalize the 'rights to living together' state can recognize the 'living together couple' also a category of family which carry the rights as equivalent as to heterosexual marriage brings in regards to social and economic benefit for examples: social security, transferable of pension, housing, parental property before and after the death of theirs homosexual partner.

The conclusion of research also suggest that homosexual need to identified their actual problem which are related to the violation of human rights. Marriage is the socially preferred institution for sexual activity and childrearing. Now, we are living in an intellectual, social and legal environment where legal idea has been strongly applied to sexual conduct and married life. So, the views delivered by radical activists that there need not be and should not be any social or legal preference in sexual activities and marriage context seems bubbles reputation which ultimately creates disaster in society and destroy the minimum government practised in the society in accordance with the system of culture, social norms and values. As a result, dispute that could be settle by customs in society will have to be settle in court. That is why, there is enormous room for debate to legalize to the homosexual relationship but there are no room for compromise to give the name marriage to 'homosexual union'. So, if their demand is more than living together then they need to review their approach and more realistic in demands.

Government of Nepal's decision on 21 June 2012 to allow LGBTIs to take citizenship mentioning 'Others' in the place of 'male / female' is a corner stone for LGBTI movement in Nepal but it came without proper study. Citizenship keep great importance in person's life, it has direct connection with parental property rights. No parents are obliged to share their property with the people who belongs to 'other' categories neither male nor female. Furthermore, passport is made according to citizenship status and there is no sufficient studied about the consequence of the citizenship in long term; whether the person get visa to travel foreign countries who belongs to 'Other' gender in place of male of female.

It is now been wellknown fact that there is also the existence of homosexual in society. So, homosexual problem could not be ignored or suppressed; feeling of discrimination and violation of human rights might be the cause of great violence. If we failed to cope the situation in time then one day it might take the form of rebellion force, which can burst unexpectedly and bring great loss in society. To make their human rights effective and minimize the impending risk in society, State should address their problem allowing them to 'living together rights'. While implementing living together (civil union) rights State also can regulate some conditions to homosexual.

Conditions might be 'one year of probation period' along with a psychological (medical) test to know whether or not they can live together and thereafter both of them can register their name in administration. Couples will be eligible to get the certificate of partnership only when both of them are happy to continue their relation and get medical clearance even after the one year of probation period from doctor. I know it might be a great discourse in the matter of discrimination of the State towards homosexual community member. Few I/NGO working in this sectors will raise their flag against government action but finally they admit the fact that it is the only possible way to gain a highest assurance of the State in order to ensure the human rights of homosexuals community in Nepal.

In spite of all these, if State recognizes the same-sex relation as given the name 'marriage' no doubt Nepal will be known as the first country to legalize the same sex relation in Asia. But, due to simple lifestyle and easy visa process of Nepal, community of homosexual from different countries may choose to settle in Nepal. The situation may create equal chance to defame Nepal for same sex hub in the world. Lesbian from neighboring South Asian Countries like India, Sri-Lanka and Pakistan, are becoming increasingly optimistic that Nepal is a place where they can be safe, free from discrimination and violence (IGLHRC, 2011).

And, allowing for same sex marriage means to changes the definition of marriage so that it loses meaning, and will have a negative impact upon society in regards to the issues of family unity, societal rule and expectations and distribution of property. Marriage will no longer be the building block of a family, but simply a confirmation of a relationship, or a commitment ceremony, and little more.

I agree that it is the high time to address the issues of homosexuality in Nepal. State should take the issues seriously and form a high level committee to investigate the cases of human rights violation which was not registered earlier or denied to provide justice to homosexual members. State also assured reservations in government vacancies while recruiting any staff in government and private organization.

Finally, to assure the human rights of the homosexual member State should take model role allowing them to 'living together rights' as it is hugely applied in western countries also.

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## **Checklist-I**

(Checklist for Lesbian)

### **Perspective of civil societies on homosexual and their human rights situation in Nepal**

Name:

Age:

Organization:

Designation:

Marital Status:

Questions:

1. Who lesbian are?
2. When did you notice that your sexual orientation is different than other girls?
3. How did you feel at the period of 'Coming Out' to the friends, family and society?
4. What type of discrimination did you feel in home and society?
5. What type of behaviors do you get in school, college and university?
6. Do you have your partner (same-sex friend)?
7. (If marriage with man) How did you manage your time with your same sex partner?
8. How is your human rights situation?

## **Checklist-II**

(Checklist for Gay)

## **Perspective of civil societies on homosexual and their human rights situation in Nepal**

Name:

Age:

Organization:

Designation:

Marital Status:

Questions:

1. Who gay are?
2. When did you notice that your sexual orientation is different than other girls?
3. How did you feel at the period of 'Coming Out' to the friends, family and society?
4. What type of discrimination did you feel in home and society?
5. What type of behaviors do you get in school, college or university?
6. Do you have your partner (same-sex sexual friend)?
7. (If marriage with man) How did you manage your time with your same sex partner?
8. How is your human rights situation?

### **Annex-I**

## **Perspective of civil societies on homosexual and their human rights situation in Nepal**

Interview schedule to civil society members:

Name :

Age :

Organization :

Designation :

Questions :

1. Who lesbian and gay are?
  - Normal people
  - Abnormal people
  - Suffered (diseased) people
2. Do they deserve special rights (reservations) like minority communities?
  - Yes
  - No
  - I don't know
3. Which one is appropriate for LG community in the Nepalese contest?
  - Present situation is good
  - Allowing Living together
  - Right to marry for LG
  - Restriction of the LG movement in Nepal.
4. What type of discriminations are they facing? You may tick more than one.
  - Use of parental property
  - Health services
  - Education and job
  - Public presence
  - Not at all on the above

Last query:

5. If you wish you may say something more about lesbian and gay?

Date:

Time:

Signature: .....

## Annex-II

### Perspective of civil societies on homosexual and their human rights situation in Nepal

Interview schedule to Homosexual Community Member:

Name:

Address:

Age:

Education:

Profession:

Religion:

Gender Identity: (Please circle one) = **Lesbian/Gay**

Marital Status: (Please tick the one)

Single

Living together with same sex ( partnership)

Married with opposite sex / Bisexual

**Close questions: Please tick the one.**

1. How old are you when you first noticed that your sexual orientation (SO) was different from the other general people?

(10-19)      (20 – 25)      (26 – 36)    or .....

2. Did you feel hesitate to say publicly about your SO to family, friends and society?

Yes

No

3. Family knowledge about their child sexuality?

Yes

No

4. Do you have access to household decision making process?

Yes

No

5. Did your family respond to you positively in your coming out process?

Yes No

6. Do you have access to parental property?

Yes No

7. "Equality, Dignity and Justice for all" Do you think the statement is equally applicable to you?

Yes No

8. Do you have equal access to health service?

Yes No

9. Do you face discrimination at school or work?

Yes No

**Open questions:**

10. What type of behavioral discrimination do you feel in family?

Answer:

11. What type of administrative difficulties do you face from the state?

Answer:

12. How did you cope the situation when you knew that you have homosexual orientation?

Answer:

13. What are your human rights?

Answer:

## Annex III

### Consent form

Date of Interview:

Length of Interview:

Place of Interview

Namaste, me Jaya Shor Chapagain and doing thesis entitle "Perspective of Civil Societies on Homosexual and their Human Rights Situation in Nepal" as a partial fulfillment of Master Degree in Sociology/ Anthropology under the Tribhuvan University of Nepal. Particularly I am focusing on the people's attitude towards homosexuality and their human rights status. To understand it holistically, I am also going to focus a bit on the social issues like discriminatory behavior to lesbian and gay both individually and institutionally. I am interested in hearing your experiences, thought and understanding along with your personal stories. So, the interview is going to be very informal and I want you to feel comfortable. I will not be using your name directly and everything that will be discussed in this interview will be kept confidential. Interview will not take more than 90 minutes.

Interviewees name:.....

Age:.....

Sex/ Gender:.....