

# Mapping laws relevant to online violence in Nepal

This is a policy mapping and review of laws that are relevant to online violence within the scope of digital rights in Nepal, with a focus on gender and sexuality. Three human rights lenses: Right to Privacy, Freedom of Expression and Freedom from Violence are used to analyze relevant laws. This document is meant to be a condensed guide for victims, legal practitioners and activists.

## Paradoxical framing

Many of these laws have a dual framing; the benefits of many of these laws appear to come with strings attached. While they have aspects that victims of online violence can use to seek justice, additional clauses have the potential to be misused for restricting civil liberties. This is a recurring theme across most of the laws cited here.

## Sweeping powers for the government

The law doesn't mention due process such as court order or legal aid for person being searched. Who is suspected (as grounds for a search) is left to the discretion of the Controller. Those in power can use this law to violate privacy of critics and stifle dissent.

## Problems gathering evidence

Perpetrators are unlikely to give consent to victims to record communications between them. Where victims are harassed through online communication, this law may make it possible to criminalize the victims themselves for recording evidence.

## How to read this chart:

- Each solid box represents a bill or law.
- Yellow highlights identify ambiguous words.
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- Light blue identifies mentions of intent.
- Exterior text... elaborates pitfalls in the laws.
- Where applicable, red arrows connect specific laws and sections to pitfalls identified in them.

### Constitution 2015

**Article 28**  
The privacy of a person, house, property, document, correspondence, information, or material regarding their character is inviolable except as provided by law.

**Article 27**  
No one will be forced to disclose anything that is legally mandated to be private. (People can inquire regarding their own personal details or anything of public interest)

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**Article 17 Article 19**  
No publication and broadcasting or printing of any news items, articles, editorials or other reading materials or audio visual materials shall be subjected to censorship. But restrictions on expressions undermining national integrity and social harmony.

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**Article 38**  
Criminalization of violence against women and provision of compensation.

**Article 39**  
Criminalization of violence against minors and provision of compensation.

**Article 21**  
Victims of any crime to have right to information on their case, and the right to justice, rehabilitation and compensation

## Privacy

## Freedom of expression

## Freedom from Violence

### Electronic Transaction Act 2008

**Section 28.1**  
Authority can access our devices, materials and data if found suspect.

**Section 38.1**  
Authority can access our private key if found threatening to sovereignty or integrity of the country, to maintain law and to maintain friendly relations with friendly countries.

**Section 47**  
Publishing or displaying of any materials in electronic media contrary to public morality is punishable.

**Section 47**  
Publishing or displaying of any materials in electronic media contrary to public morality, decent behaviour, to spread hate or jealousy, to jeopardise social harmony is punishable

**Section 46**  
Criminalizes destruction, damage, deletion, alteration or disruption of information on any computer source, or intentionally causing any person to carryout such an act.

**Section 47**  
Publishing or displaying of any materials in electronic media contrary to public morality, decent behaviour, to spread hate or jealousy, to jeopardise social harmony is punishable

### Criminal Code 2017

**Section 122**  
Restriction in showing private parts or act obscenely or talk vulgar in public.

**Section 294**  
Prohibits disclosing private information without permission, including private information on public figures unless compelled by law

**Section 298**  
Obtaining and transferring any notice, information or correspondence restricted unless authorized.

**Section 293**  
Prohibits listening or recording of other's conversation without the permission of the competent authority or consent of involved persons, unless for any statement that is publicly made.

**Section 295**  
Prohibits photographing or disfiguring photographs of a person outside of a public space without their consent.

**Section 121**  
Producing, selling, publishing, promotion through electronic medium, purchase, rent, display or keep obscene books and brochures which promotes immorality, eroticism is prohibited.

**Section 306**  
Criminalizes defamation through any medium, that harms reputation of living or deceased person or hurts feelings of their family/relatives. However, exceptions are made for any expression done with evidence, for public good, to caution concerned person, to criticize those with authority, or as part of investigation.

**Section 293**  
Prohibits listening or recording of other's conversation without the permission of the competent authority or consent of involved persons, unless for any statement that is publicly made.

**Section 294**  
Prohibits disclosing private information without permission, including private information on public figures unless compelled by law

**Section 122**  
Restriction in showing private parts or act obscenely or talk vulgar in public.

**Section 295**  
Taking or morphing pictures without consent criminalized.

**Section 300**  
Prohibits threats, harassments, improper behavior to harm or defame others through electronic media.

**Section 305**  
Criminalizes slander through verbal or written form that intends to undermine another person or their reputation.

**Section 224**  
Sexual harassment is touching or trying to touch others private parts without consent or due intention of rape, or directs other towards private space, make them touch their sexual organs, communicate obscene issue verbally, written or any other form.

**Section 306**  
Criminalizes defamation through any medium, that harms reputation of living or deceased person or hurts feelings of their family/relatives. However, exceptions are made for any expression done with evidence, for public good, to caution concerned person, to criticize those with authority, or as part of investigation.

### IT Bill 2019

**Section 76.1**  
Restriction in acquiring individual's data unless provided by law.

**Section 76.2**  
Privacy of conversation between two or more parties held through electronic medium assured unless given the consent to record, listen or (de)encrypt.

**Section 83**  
Cyber bullying is defined as continually harassing, teasing, demeaning, discouraging, insulting or scolding someone.

**Section 86**  
Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

**Section 87**  
No one shall use electronic medium or establish online relation with an intention of sexually exploiting or carrying out illegal activities.

**Section 88.1**  
Restriction of electronic media usage that attacks national sovereignty, integrity, nationality and brings hatred, mistrust among communities.

**Section 88.2**  
Restriction of electronic media usage that incite discrimination or is against public conduct or morality.

**Section 87**  
No one shall use electronic medium or establish online relation with an intention of sexually exploiting or carrying out illegal activities.

**Section 86**  
Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

"Domestic Violence" is physical, mental, sexual and economic harm perpetrated by a person on another with whom he/she has a family relationship.

### Privacy Act 2018

**Section 4.2**  
Privacy between husband and wife inviolable except where necessary in case running between husband and wife.

**Section 12.6**  
Authorized official may make inquiries into issues such as age, qualification, character, sexuality, disability of any person; concerned person must oblige.

**Section 15.2**  
No person shall make any comments on the character of any person except when law is required to inquiry.

**Section 16.1**  
Prohibits photography without consent done to damage person's character or prestige, or photo manipulation with intent to defame, or the publicizing of such materials.

**Section 16.3**  
Prohibits publishing, sharing and trading pictures taken without consent, with the intention to annoy, distress or take any improper advantage, or gain profit.

**Section 88.1**  
Restriction of electronic media usage that attacks national sovereignty, integrity, nationality and brings hatred, mistrust among communities.

**Section 88.2**  
Restriction of electronic media usage that incite discrimination or is against public conduct or morality.

**Section 91**  
Social network sites will be non-functional/banned in Nepal if they are not registered at Department of Information Technology.

**Section 92**  
Arbitrary removal of content on social sites by Department of Information and Technology on the basis of vague limitations and expansive terms such as offensive content.

**Section 83**  
Cyber bullying is defined as continually harassing, teasing, demeaning, discouraging, insulting or scolding someone.

**Section 86**  
Production, collection, distribution, publication, exhibition, transmission or purchase/sale of pornographic materials is punishable.

### Consent loopholes

**Section 3.2**  
Anyone's privacy shall be inviolable without the consent of the person concerned, except for health treatment or relief work.

**Section 6**  
Information related to reproductive health and pregnancy of every woman shall be inviolable, except for underage person and those of "unsound" mind.

**Section 15.2**  
No person shall make any comments on the character of any person except when law is required to inquiry.

**Section 16.3**  
Prohibits publishing, sharing and trading pictures taken without consent, with the intention to annoy, distress or take any improper advantage, or gain profit.

**Section 16.1**  
Prohibits photography without consent done to damage person's character or prestige, or photo manipulation with intent to defame, or the publicizing of such materials.

## Ambiguity

- "obscenity"
- "vulgar"
- "deency"
- "integrity"
- "social harmony"
- "public morality"
- "public conduct"
- "national sovereignty"

The laws contain terms such as these, which are then left undefined. This ambiguity gives those in power ample space for interpretation when using these laws against the marginalised, further putting them at risk and curbing dissent. Many of these are also morally loaded terms that promoting moral policing rather than unbiased prosecution of crime.

## Proving Intent

The Criminal Code and the IT Bill have articles that hinge criminality on the intent of the perpetrator. This provides a loophole for perpetrators to get away by claiming the harm caused was not their intent. Burden of proof is also generally placed on victims. The law is unclear on how to prove intent. It allows authorities to decide the purpose of certain actions, leaving space for abuse of power.

## Freedom of Expression

Right to freedom of expression is curtailed in the name of national security and social harmony. Political satire and voices that oppose power could be restricted. This poses a risk for activism. Sexual expression is also curbed under the premise of public morality or decency. Asides from direct curbing of rights, loopholes in privacy mean that citizens feel greater surveillance from the state, and thus are not able to express their opinion freely.

## Consent missing

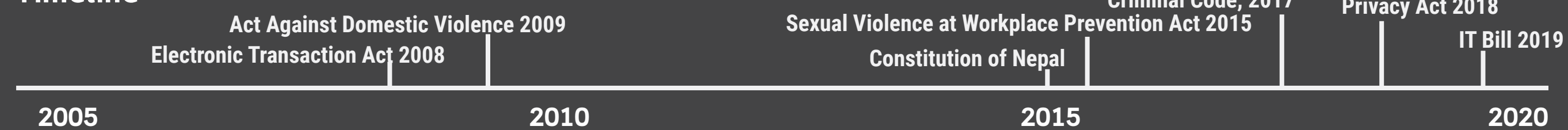
Consent between and of the individual(s) involved are not regarded in framing of the laws and its implementation. It implies (all) sexual content to be 'obscene' and does not respect the agency of an individual over their own bodies and criminalises sexual expression.

## Potential backfire on victims

Many of the laws criminalize sexual expression, labelling it as obscene or immoral even if it was created through the individual's choice. By not acknowledging consent, the laws create a blanket rule that can be misused to punish victims if their privacy is violated online and their private expressions exposed. The laws may harm the victim instead of punishing the perpetrator.

★ While the IT Bill is a proposed document, we have included it here because of its importance in public discussion on legal measures for online violence.

## Timeline



Body & Data is a digital rights organization in Nepal that aims to increase women and queer persons' engagement in digital spaces through suitable strategies for expression, autonomy and agency.